117-370

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 156.

JOHN VAN RISWICK, APPELLANT,

vs.

WILLIAM E. SPALDING, WILLIAM L. SPALDING, JAMES B. SPALDING, ANNIE SPALDING, NETTIE SPALDING, GEORGE W. BONNELL, WILLIAM H. THOMAS, AND WILLIAM W. RAPLEY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 1, 1882.

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a Transcript of Record from Supreme Court, District of Columbia.

VAN RISWICK *vs.* SPALDING.

We consent to the filing of this record and the vacation of the judgment docketing & dismissing the appeal. The clerk will please enter our appearance for the appellee.

ELLIOT & ROBINSON.

Oct. 20, '82.

1 *Bill. Filed Dec.* 24, 1878.

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WILLIAM E. SPALDING, WILLIAM L. SPALDING, JAMES R. Spalding, Annie Spalding, Nettie Spalding, Geo. W. Bonnell, William H. Thomas.

No. 6569. Equity Dock.

To the supreme court of the District of Columbia, sitting in equity:

Your orator, John Van Riswick, in behalf of himself, as assignee of the judgment hereinafter mentioned, and of all others, the judgment creditors of the hereinafter-named William E. Spalding, who shall properly come in and contribute to the expenses of this suit, brings this his bill of complaint against the said William E. Spalding and William L. Spalding, James R. Spalding, Annie
2 Spalding, and Nettie Spalding, children of the said William E. Spalding, and Geo. W. Bonnell, all of whom are residents of Washington, in the District of Columbia, and are sued in their own right, (the said James R., Annie, and the said Nettie Spalding being infants of tender years,) and William H. Thomas, a resident of Louisville, in the State of Kentucky, who is sued as trustee, as hereinafter is mentioned, and thereupon your orator complains and says as follows:

1. That hereafter, to wit, on the 17th day of October, A. D. 1867, the said William E. Spalding was impleaded on the law side of this honorable court by the National Bank of the Metropolis, a body corporate within the city of Washington aforesaid, in a certain action of assumpsit for the recovery of the contracts of certain bills of exchange, the same being action numbered 4248, at law, and such proceedings were thereupon had; that thereafterwards, to wit, on the sixth day of February, A. D. 1868, judgment was rendered against said William E. Spalding in favor of
3 the said National Bank of the Metropolis, for the sum of $3,272.49, with interest on $1,480 from the 13th day of May, 1866; on $462.49 from the 1st day of October, 1867, and on $1,330 from the 14th day of May, 1866, until paid, besides $26.25, costs of suit; that thereafterwards, to wit, on the 2nd day of March, 1868, a writ of *fieri facias* was issued on said judgment and placed in the hands of the United States marshal for said District of Columbia, who made return thereof "*nulla bona;*" that afterwards, to wit, on

the 2nd day of October, 1868, the said National Bank of the Metropolis, for value, assigned the said judgment to your orator, and the same was, thereupon, duly entered on the record of said action to the use of your orator, as will fully appear, reference being had to a short copy of said judgment herewith filed, marked Exhibit J. V. R., and prayed to be taken as part hereof, and that there is yet due and owing unto your orator, as assignee as aforesaid and
4 on account of said judgment, the sum of $1,979.60, together with interest from the 16th day of December, A. D. 1868.

EXHIBIT J. V. R.

Short Copy.

Clerk's Office, Supreme Court of the District of Columbia.

NATIONAL BANK OF THE METROPOLIS, use of John Van Riswick,
vs.
WILLIAM E. SPALDING. } No. 4248. Docket.

1868, Feb. 6. Judgment for pl'ff, $3,272.49.
Interest on $1,480.00 from May 13th, '66, & o $462.49
from Oct. 1, '67, & on 1,330.00 from May 1[illegible], '66, till paid.
Costs of suit, $26.75.
1868, M'ch 2. *Fi. fa.* issued & returned *nulla bona.*
Test: R. J. MEIGS, *Clerk.*
_____, *Ass't Clerk.*

December 24, '78.

5 $1,979.60, together with interest from the 16th day of December, A. D. 1868.

2. That heretofore, to wit, on the 20th day of December, 1867, the said defendant, William E. Spalding, being seized in this demesne as of fee, or being otherwise well entitled unto all that certain piece or parcel of ground situate and lying in Washington city, in the District of Columbia, known as sub lot numbered eleven (11), being part of original lot numbered one (1), in square numbered one hundred and sixty-one (161), and which is bounded as follows: Beginning for the same at the northeast corner of said original lot numbered one (1), on Connecticut avenue, and running thence along the line of said avenue southeastwardly twenty (20) feet; thence southwestwardly to the dividing line between the said original lot numbered one (1) and original lot numbered [two] (2), in the same square; thence northwestwardly twenty (20) feet; thence
6 northeastwardly to the place of beginning; it being the same piece of property as conveyed from Southey S. Parker and recorded in liber *in liber* R. M. H., numbered six (6), folio one hundred and twelve (112).

Also that other certain piece or parcel of ground situate and lying in Washington city, in the District of Columbia, being east part of

lot numbered three (3), in square numbered seven hundred and ninety-three (793), and which is bounded as follows: Beginning for the same at the southeast corner of said lot, and running thence north one hundred and forty-four (144) feet three (3) inches; thence west forty-two (42) feet; thence southeastwardly about one hundred and forty-four (144) feet three (3) inches to the line of E street south; thence along the line of the said street thirty-five (35) feet six (6) inches to the place of beginning; being the same piece or parcel of ground conveyed to the said William E. Spalding by deed bearing date the 20th day of November, A. D. 1866,
7 from James C. Kennedy *et al.*, and recorded in liber R. M. H., numbered twenty-six (2[illegible] folio numbered forty-two (42).

With the corperation of his wife, Maria P. Spalding, conveyed the same together with (your orator is informed and believes, and therefore charges) all the rest and residue of the real estate owned by him, the said William E. Spalding, and lying within the District of Columbia aforesaid, unto the defendant, William H. Thomas, in trust, to secure the payment of a certain indebtedness in said deed mentioned unto one William W. Rapley, and upon the further trust, on payment of said indebtedness, to hold such of the aforesaid real estate as should remain unsold to the sole and separate use of the aforesaid Maria P. Spalding, wife, as aforesaid, of the said William E. Spalding, and their children, and to such uses as she, the said Maria P. Spalding, might, in writing, appoint, as will fully and at large appear, reference being had to said deed or
8 conveyance, in trust, duly recorded in liber C. C. E. No. 24, at folio 291, one of the land records of the District of Columbia, and prayed to be read, at the hearing of this cause, as part hereof.

3. That the indebtedness, so as aforesaid mentioned and described in said deed or conveyance in trust, hath been long since satisfied and discharged by the proceeds of the sale of the property in said deed mentioned other than the hereinbefore described pieces or parcels of real estate; that the pretended trust, so as aforesaid, sought to be created in and by said deed in favor of the said Maria P. Spalding and the children of her and the defendant, William E. Spalding, was founded upon no consideration whatever; that the same was limited, and the said deed was executed at a time when the said William E. Spaulding was heavily indebted, not alone to the said William W. Rapley and the aforesaid National Bank of the Metropolis, but likewise unto your
9 orator and divers other creditors whose claims are unsatisfied at the present time; that the creation of said pretended trust and the execution of said conveyance was a colorable devise on the part of the defendant, William E. Spalding, to defraud, hinder, delay, and, if possible, defeat said creditors, other than the said William W. Rapley, in the prosecution and satisfaction of their several claims against the said William E. Spalding; that the same was resorted to in contemplation and evasion of the aforesaid judgment, and your orator therefore submits that said trust in favor of the said Maria P. Spalding and the children aforesaid is void and of none-effect to

defeat the rights of your orator and other *bona fide* creditors of the said William E. Spalding.

4. That thereafterwards, to wit, on the — day of ———, A. D. ——, the said Maria P. Spalding departed this life without having attempted to exercise the power of appointment so as aforesaid colorably conferred upon her in and by said deed or conveyance in trust, and that of her and the defendant's, (William E. Spalding's) children, there are surviving the defendants, William L., James R., Annie, and Nettie Spalding, the last three being as aforesaid infants of tender years.

5. That notwithstanding the aforesaid indebtedness of the said William E. Spalding to the said William W. Rapley had been for a long time before fully paid and discharged, and the purposes of the aforesaid deed or conveyance in trust, so far as the same concerned as affected the said William W. Rapley, had been fully performed and the trust discharged; the said William E. Spalding still further continuing to defraud, embarrass, and defeat his aforesaid other creditors in any attempt they or any of them might make to recover the amounts of their several debts against him, and having to this end secured the co-operation of the said William W. Rapley and of the defendant, William H. Thomas, thereafterwards, to wit, on the 27th day of March, A. D. 1876, by his certain deed or conveyance in fee simple, jointly executed by him, the said William E. Spalding, the said William W. Rapley, and the defendant, William H. Thomas, as trustee, undertook to convey the hereinbefore-decribed pieces or parcels of real estate to the defendants, Geo. W. Bonnell, upon an alleged consideration of two thousand and five hundred (2,500) dollars, but really upon no consideration whatsoever, as your orator is informed, believes, and, therefore, charges, and your orator prays that the record of said deed in liber 811, fol. 452, one of the land records aforesaid, may be made a part hereof at the hearing of this cause. That the said Geo. W. Bonnell (who, as your orator further is informed and believes, is associated in business as copartner or otherwise with the said William E. Spalding), was at the date of said conveyance and now is pecuniarily insolvent and disqualified from paying the aforesaid or any like consideration for the purchase of said property; that the said Geo. W. Bonnell in fact holds, and that it was the purpose of the grantors in said last-mentioned conveyance that he should hold the legal title in and to said real estate or otherwise than as a bare trustee for the said William E. Spalding; that the said William E. Spalding exercises and hitherto has exercised sole and exclusive ownership over said property, and that the said William E. Spalding is possessed of no property, real or personal, in the District of Columbia aforesaid, which is subject to process of execution at law.

6. Your orator further shows that until of late he was not made aware of and was consequently without the means of exhibiting unto this honorable court the defendant Spalding's aforesaid fraudulent attempt to create a trust upon and make conveyance of the hereinbefore-mentioned and described real estate in dero-

gation of the rights of your orator and other judgment creditors of said Spalding; all which actings, doings, and pretences of the said defendant your orator avers to be contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators and others, the said creditors, in the premises.

In consideration whereof, and forasmuch as your orator is entirely remideless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said defendants may, if they can, show cause why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true,
14 and perfect answers make, as well to the matters hereinbefore alleged as to such of the several interrogations hereinafter numbered and set forths, as by the note hereunder written, they are respectively required to answer—that is to say:

(Interrogationes addressed to William E. Spalding:)

1. Whether any and, if any, what amount of the indebtedness from the defendant, William E. Spalding, to William W. Rapley (to secure which the deed of trust of December 20th, 1867, was given) remained unpaid on the 27th day of March, 1876?

2. What was the aggregate amount of the net proceeds of the sales made prior to the 27th day of March, 1876, of property mentioned and described in the deed of trust of December 20th, 1867, and whether said net proceeds of said sales were applied to the payment of the indebtedness secured by said deed of trust?

3. Whether the said William E. Spalding received any,
15 and, if any, what consideration for the execution of the conveyance to the defendant, George W. Bonnell, of the hereinbefore described real estate, bearing date on the 27th day of March, 1876?

4. Whether, since the execution of said last-mentioned conveyance, the said William E. Spalding has not treated the hereinbefore-described property as his own discharged, absolutely, as well of any trust, in favor of the infant defendants hereto as of any interest therein incur-ing by virtue of said pretended deed to the defendant, Geo. W. Bonnell?

5. Whether the said William E. Spalding is not now, or was not until very lately, engaged in the execution of improvements upon the hereinbefore-described real estate at his own expense and for his own individual use and benefit?

6. (Interrogatories addressed to Geo. W. Bonnell:) Whether
16 at the time of the execution of the aforesaid conveyance of March 27th, 1876, the defendant, Geo. W. Bonnell, was possessed of any, and if any, of what amount in value and kind of property, real or personal?

7. Whether any and, if any, what consideration passed from the said defendant, Geo. W. Bonnell, for said last-mentioned conveyance?

8. Whether the said Geo. W. Bonnell has ever, in fact, exercised acts of ownership over the aforesaid property; or whether, at the date of said conveyance, he was, or since then has been, in such a condition, pecuniarily, as to be enabled to purchase said property?

9. Whether, in fact, he ever negotiated for the purchase of said property, or desired to become the purchase- thereof?

10. Whether he was made aware of the deed of March 27th,
17 1876, simultaneously with or before its execution, and if not, when was he advised thereof, if ever, and by whom?

11. Whether he claims any, and, if any, what interest, and upon what consideration in and to said property?

And that the hereinbefore pieces or parcels of real estate may be decreed to be free and discharged of and from the operation of the aforesaid deed as conveyance in trust of the 20th day of December, 1867, and that the defendant, William H. Thomas, may be directed to execute a release thereof; and that the aforesaid deed or conveyance in fee simple of the 27th day of March, 1876, may be decreed to have been null and void and of none effect to prejudice or impair the rights of your orator and other creditors of the said defendant, William E. Spalding.

And that some proper and discreet person or persons may be appointed to act as trustee or trustees to make sale of the afore-
18 said real estate, and the proceeds thereof to bring into court to be applied under the rules thereof to the satisfaction so far as may be of the aforesaid judgment of your orator and of other the aforesaid creditors of the said defendant, William E. Spalding, who shall participate in these proceedings.

And that a guardian or guardians *ad litem* may be appointed for the infant defendants above named.

And that your orator may have such other and further relief as the nature of this case may require.

May it please this honorable court to grant writs of subpœna against the defendants, William E. Spalding, William L. Spalding, James B. Spalding, the infant defendants, James B., Annie, and Nettie Spalding, and the defendants Geo. W. Bonnell and William H. Thomas, requiring them to appear and answer the exigency of this bill.

JOHN VAN RISWICK.

T. A. LAMBERT,
Of Counsel.

I, John Van Riswick, on oath say that I have read the
19 foregoing bill of complaint by me subscribed, and know the contents thereof; that the facts therein stated of my personal knowledge are true, and that the facts therein stated on the information of others I believe to be true.

JOHN VAN RISWICK.

20 *Subpœna to Answer.*

In the Supreme Court of the District of Columbia, the 24th day of December, 1878.

JOHN VAN RISWICK, Complainant, *against* WILLIAM E. SPALDING *et al.*, Defendants. } No. 6569. Eq'y Dock 19.

The President of the United States to William E. Spalding, William L. Spalding, James B. Spalding, Annie Spalding, Nettie Spalding, Geo. W. Bonnell, William H. Thomas, defendants:

You are hereby commanded to appear in this court, at its first special term, occur-ing twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness:

D. K. CARTTER, *Chief Justice.*

R. J. MEIGS, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

21 Memorandum that the defendant-, herewith served, *is* to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Not to be found, Wm. H. Thomas. Summoned all the others Dec'r 27th, 1878.

F. DOUGLASS, *Marshal.*

22 *Order for Appearance of Absent Defendant. M.* 14, *p.* 150, 15. *Filed Dec.* 30, 1878.

In the Supreme Court of the District of Columbia, the 30th day of December, 1878.

JOHN VAN RISWICK *vs.* WM. E. SPALDING *et al.* } No. 6569. Equity Docket 19.

On motion of the plaintiff, by Mr. T. A. Lambert, his solicitor, it is ordered that the defendant, William H. Thomas, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court:

MACARTHUR,
Justice, &c.

23 *Decree Pro Confesso vs. Def'ts all, M.* 14, *p.* 364, 2 *V. Filed May* 8, 1879.

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WILLIAM E. SPALDING, WILLIAM L., JAMES B., and Annie and Nettie Spalding, Geo. W. Bonnell, and William H. Thomas.

No. 6569. Eq. Doc. 19.

The defendants to this cause having been duly served with process of subpœna (the defendant William H. Thomas by publication duly made), and having failed to answer after appearance to the exigency of the bill of complaint within the time prescribed by rule of court or at all, it is, this 8th day of May, 1879, on motion of the complainant, by the court ordered that the said bill of complaint be, and it hereby is, taken *pro confesso* against the said defendants and each of them.

By the court:

MACARTHUR, *Justice.*

24 *Order Setting Aside Pro Confesso, M.* 14, *p.* 403, 15. *Filed May* 24, 1879.

In the Supreme Court of the Dist. of Col.

JOHN VAN RISWICK
vs.
WM. E. SPALDING *et al.*

No. 6569. Equity.

On motion of defendants, by their solicitor, and by consent of plaintiff's solicitor, it is, this 24th day of May, A. D. 1879, ordered that the decree *pro confesso* heretofore passed in this cause be, and the same hereby is, vacated and set aside, and that the defendants have leave to file their answer.

By the court:

MACARTHUR, *Justice.*

I consent.

T. A. LAMBERT,
Sol'r of Compl't.

25 *Separate Answer of Wm. E. Spalding. Filed May* 24, 1879.

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WM. E. SPALDING *et al.*

No. 6569. Eq. Doc. 19.

The separate answer of Wm. E. Spalding to the bill of complaint of the above-named complainant in this behalf exhibited, &c.

The defendant, Wm. E. Spalding, for answer unto said bill, or so much thereof as he is advised it is material and proper for him to answer, answering, says:

1st. That the said bills of exchange referred to by the complainant and reduced to judgment, as in said bill alleged, were mere accommodation bills, whereof the complainant had notice before becoming the assignee of said judgment.

2d. This defendant admits the averment of the 2nd para-
26 graph of said bill of complaint, insofar as they relate to *to* his ownership of the real property therein described, and the conveyance thereof in trust unto the defendant, William H. Thomas.

3d. Answering the 3rd paragraph of the bill this defendant denies the alleged satisfaction of said indebtedness so as aforesaid secured thereby, and he further denies the alleged want of consideration in the execution of said trust, and any and every averment touching the *bona fides* of said conveyance and calls for strict proof of such averments; and he further denies each and every allegation, insinuation, or charge in this paragraph contained, to the effect that said conveyance was merely colorable and designed to hinder, delay, and defraud the creditors of this defendant; and he also denies the averment in this paragraph contained that said conveyance was resorted to in contemplation and evasion of the aforesaid judgment in favor of complainant, &c., &c.

27 4th. This defendant admits the death of his wife, Maria P. Spalding, and the other averments of this paragraph of the bill of complaint.

5th. Answering the 5th paragraph of the bill, this defendant says that the indebtedness due the said William W. Rapley has never been satisfied and discharged; that there is still due and owing the said Rapley the sum of $10,000 & upwards, and that said Rapley, in consideration of the circumstances of this defendant and of his family, united in the conveyance in this paragraph mentioned solely for the use and benefit of the children of this defendant, and upon no other consideration whatsoever, and the same was a voluntary gift by said Rapley to said children, and to that end the conveyance mentioned was made to the defendant, George W. Bonnell, in trust for said children. Defendant denies all charges or insinuations of fraud in this paragraph contained, and, whilst he admits that there was no consideration for said conveyance other than the vol-
28 untary gift of said Rapley, he denies that the defendant, Bonnell, holds the title in trust for this defendant.

6th. Defendant does not know when complainant first became aware of the conveyance aforesaid, but avers that the same has been matter of record since the 17th day of April, 1876, and he emphatically denies any and every allegation, insinuation, or intimation of fraud in the paragraph alleged or contained, and calls for strict proof thereof.

And in answer to the several interrogatories appended to the bill of complaint, and addressed to this defendant, he says:

1st. $10,000 and upwards of indebtedness, secured as stated and due Wm. W. Rapley, was due and unpaid on the date mentioned, and is still due and unpaid.

2nd. The aggregate amount of sales was $22,046.46, and $22,046.46 was applied to indebtedness secured by aforesaid trust.

3d. This defendant received no consideration for the con-
29 veyance mentioned; he had no interest in the property, and had no reason to unite in the conveyance.

4th. This defendant has not treated the property as his own, only so far as to protect the interest of his children, the equitable owners thereof under the gift from William W. Rapley.

5th. This defendant has never erected any improvements upon said property in his own right, but has superintended the same for his children, who have means of their own.

And, having fully answered, this defendant prays to be hence dismissed with his reasonable costs, &c.

I do solemnly swear that I have heard read the foregoing and annexed answer by me subscribed, and know the contents thereof; that the facts therein stated on my personal knowledge are true, and that those stated on information and belief I believe to be true.

WM. E. SPALDING.

30 Subscribed and sworn to before me, this 23d day of April, A. D. 1879.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk.*

R. K. ELLIOT,
For Defendant.

31 *Separate Answer of the Defendant, Wm. L. Spalding. Filed May 24, 1879.*

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WM. E. SPALDING *et al.* } No. 6569, Eq. Doc. 19.

The separate answer of the defendant, Wm. L. Spalding, to the bill of complaint in this cause exhibited, &c.

This defendant, having no personal knowledge of the matters and things in said bill alleged, can neither admit nor deny them, but calls for strict proof thereof so far as the same may affect his interest.

WM. L. SPALDING.

Subscribed and sworn to before me, this 25 day of April, A. D. 1879.

R. J. MEIGS,
Clerk S. C. D. C.,
By R. J. MEIGS, JR., *Ass't.*

R. K. ELLIOT,
For Defendant.

32 *Separate Answer of the Defendant George W. Bonnell. Filed May* 24, 1879.

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WM. E. SPALDING. } No. 6569. Eq. Doc. 19.

The separate answer of the defendant, George W. Bonnell, in this cause, exhibited, &c.

This defendant, for answer unto said bill or so much thereof as he is advised it is necessary and proper for him to answer, answering, says:

1st. He has no personal knowledge respecting the allegations of the 1st paragraph of the bill, and in so far as the same may concern him calls for strict proof thereof.

2nd. He has no personal knowledge in respect of the allegations of the 2d paragraph of the bill, and in so far as the same may affect this defendant he calls for strict proof thereof.

33 4th. Defendant believes the facts set forth in this paragraph to be correct.

5th. Answering the 5th paragraph of the bill the defendant says he admits the conveyance therein mentioned, and says that he paid no money consideration therefor, but he denies that he is insolvent, as alleged, and he also denies that he holds the title so conveyed to the use of the said Wm. E. Spalding, and he also denies the other averments of said paragraph in so far as they concern this defendant, excepting that he is engaged in business with the defendant Wm. E. Spalding.

6th. Answering the 6th paragraph of the bill of complaint this defendant denies the averments thereof in so far as they may affect this defendant, and calls for strict proof thereof.

And in answer to the interrogatories annnexed to said bill, and addressed to this defendant, he says:

34 1st. I was possessed of real property at date of the deed mentioned of the value of $2,000.

2nd. No consideration passed for the conveyance referred to in the 7th interrogatory, as said conveyance was to me for the children of Wm. E. Spalding.

3rd. I have exercised ownership over said property in order to protect the interests of the beneficiaries aforesaid, and I have been in a condition to purchase said property.

4th. I did not negotiate for the transfer of said property to myself; I knew of the execution of the deed of March 27, 1876, before the property was conveyed; I prepared the deed at the request of Wm. Rapley.

5th. I claimed no interest in the ground and in nothing about

the same excepting what belongs to me in the erection of the building.

35 I do solemnly swear that I have heard read the foregoing and annexed answer by me subscribed and know the contents thereof; that the facts therein stated on my personal knowledge are true and that those stated on information and belief I believe to be true.

GEORGE W. BONNELL.

Subscribed and sworn to before me this — day of April, A. D. 1879.

R. J. MEIGS, *Cl'k*,
By R. J. MEIGS, Jr., *Ass't.*

R. K. ELLIOT,
For Defendant.

36 *Separate Answer of the Defendant William H. Thomas. Filed May* 24, 1879.

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WM. E. SPALDING *et al.* } No. 6569. Eq. Doc. 19.

The separate answer of the defendant William H. Thomas to the bill of complaint in this cause exhibited, &c.

This defendant for answer unto said bill or so much thereof as concerned him says:

That he admits the conveyance in trust to him, and the conveyance to the defendant George W. Bonnell, and having no knowledge respecting the other averments of said bill can neither admit nor deny the same, but calls for strict proof thereof, in so far as the same may be material.

R. K. ELLIOT,
Solicitor & of Counsel.

37 *Assessment of Spalding Property.*

TREASURER AND ASSESSOR'S OFFICE,
WASHINGTON, D. C., *Sept.* 16, 1880.

I certify that the assessed value for the year 1876 of the east thirty-five feet six inches front of lot 3, square 793, in name of Julius A. Fay, is $1,118, and that the assessed value for the same year of the west 23 feet 11 inches front of lot 3, same year, square, in name of R. Collingsworth, first, is $596. The assessed value of sub-lot 11, square 161, for year 1876, in name of Wm. E. Spalding, is $1,583.

WILLIAM MORGAN,
Ass't Assessor.

It is hereby stipulated that the foregoing paper may be considered

part of the answers of the defendants for the purpose of showing the assessed value of the property conveyed to the defendant Bonnell.

T. A. LAMBERT.

1,118
596
1,583

Total, $3,297

38 *Replication. Filed Aug.* 9, 1879.

In the Supreme Court of the District of Columbia, Sitting in Equity.

JOHN VAN RISWICK
vs.
WILLIAM E. SPALDING *et al.* } No. 6569. Eq. Doc. 19.

The complainant joins issue with the defendants and will hear the cause upon bill, answers, and replication.

T. A. LAMBERT,
Sol'r for Compl't.

39 *Decree Dismissing Bill with Costs. Filed Dec.* 16, 1879.

In the Supreme Court of the Dist. of Col'a.

JOHN VAN RISWICK
vs.
WM. E. SPALDING *et al.* } No. 6569. Eq. Doc. 19.

This cause having been submitted to the court on the pleadings, and having been duly considered, it is thereupon this 16th day of December, A. D. 1879, ordered, adjudged, and decreed that this bill of complaint be, and the same hereby is, dismissed, with costs.

By the court: MACARTHUR, *Justice.*

40 *Appeal to General Term. Dec.* 18, 1879.

In the Supreme Court of the District of Columbia.

J. VAN RISWICK
vs.
WM. E. SPALDING *et al.* } No. 6569. Eq. Docket 19.

The clerk will note appeal by complainant from the decree at special term, dismissing bill, and enter cause for hearing thereon at next general term of the court.

T. A. LAMBERT,
Sol'r for Compl't.

Appeal as ordered calendered Dec. 18, 1879.
By the court.

41 *Proceedings before General Term.*

In the Supreme Court of the District of Columbia.

J. VAN RISWICK
vs.
WM. E. SPALDING *et al.* } No. 6569. Equity Docket 19.

Mr. Lambert, counsel for complainant, moves that the case be remanded to the special term for the purpose of making additional parties defendant.

By the court: "What can be done here."

Motion overruled.

42 *Order Appointing R. K. Elliot, Esq., Guardian ad litem of Infant Defendant. Filed Mar.* 11, 1880.

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WILLIAM E. SPALDING *et al.* } No. 6569. Eq. Doc. 8.

It appearing to the court that the infants, defendants Annette Spalding and Anna D. Spalding, have been duly served with subpœnas, but that no guardian or guardians *ad litem* has or have been appointed to make answer in their behalf unto the exigency of the bill of complaint, it is thereupon, on motion of the complainant, by the court, this eleventh day of March, A. D. 1880, ordered that R. K. Elliot, Esq., be, and he hereby is, appointed guardian *ad litem* of the said defendant infants, the said Annette and Anna D. Spalding, being each above the age of fourteen years of age, and being both present in court, and having signified their election of
43 the said R. K. Elliot, Esq., as their guardian *ad litem* aforesaid.

By order of the court.

D. K. CARTTER,
Ch'f Just.

44 *Answer of Annette and Anna D Spalding, infants, by Guardian ad litem. Filed May* 4, 1880.

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WILLIAM E. SPALDING *et al.* } No. 6569. Eq. Doc. 19.

The answer of Annette Spalding and Anna D. Spalding to the bill of complaint of John Van Riswick, complainant, filed against them and others in the supreme court of the District of Columbia, and numbered 6569, equity.

The said defendants say that they are infants, under the age of twenty-one years, and that they claim such interest in the premises as they are entitled to, and submit their said interests to the protec-

tion of this honorable court, and pray to be hence dismissed with reasonable costs.

R. K. ELLIOT,
Guardian ad Litem.

45 *Decree in General Term. Oct.* 19, 1880.

In the Supreme Court of the District of Columbia.

J. VAN RISWICK
vs.
WM. E. SPALDING *et al.* } No. 6569 Equity Docket 19.

This cause came on to be heard upon the record of the special term and was argued by counsel; whereupon, upon consideration thereof, it is ordered and adjudged and decreed that the decree of the special term of December 16th, 1879, dismissing the bill be, and the same is hereby, this 19th day of October, 1880, reversed; and the court orders that the cause be remanded to the special term for the purpose of making another or other parties, and otherwise to amend as complainants may be advised.

46 *Amendment to Bill of Complaint. Filed Nov.* 2, 1880.

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WILLIAM E. SPALDING *et al.* } No. 6569. Eq. Doc. 20.

And now comes the complainant, leave of the court being first thereunto had and obtained, and demands his bill of complaint by adding to the parties defendant therein named William W. Rapley, and by praying that the interrogatories therein addressed to the defendant, William E. Spalding, and which are numbered one (1), two (2), three (3), four (4), and five (5), and that of the interrogatories therein addressed to George W. Bonnell, the interrogatories numbered seven (7) and nine (9) may be propounded to the said William W. Rapley, and that he be required true and full answer to make as well thereunto as to the rest and residue of said bill, ex-
47 cepting the interrogatories therein contained which are not so as aforesaid propounded unto him.

T. A. LAMBERT,
Counsel for Complainant.

48 *Subpœna to Answer, Original Bill, and Amended Bill.*

In the Supreme Court of the District of Columbia. November, 1880.

JOHN VAN RISWICK, Complainant,
against
WM. E. SPALDING *et al.*, Defendants. } No. 6569. Equity Docket 19.

The President of the United States to Wm. W. Rapley, defendant:
You are hereby commanded to appear in this court, at its first

special term, occurring twenty days after service of this subpœna, and answer the exigency of the original and amended bill, under pain of attachment and such other process of contempt as the court shall award.

Witness:

D. K. CARTTER,
Chief Justice.
R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Ass't Clerk.

49 *Marshal's Return.*

Served def't Nov. 10th, 1880.

F. DOUGLASS, *Marshal.*

50 *Answer of W. W. Rapley. Filed Dec.* 31, 1880.

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WILLIAM E. SPALDING *et al.*
} No. 6569. Equity Docket 19.

The separate answer of William W. Rapley to the complainant's amended bill of complaint, or so much thereof as he is advised it is material & proper for him to answer, shows as follows:

This defendant has no personal knowledge of the matters & things contained in the first paragraph of the complainant's bill.

This defendant has no reason to doubt the substantial accuracy of the matters & things alleged in the 2d paragraph of the complainant's bill, but refers to the deed of trust mentioned therein to the defendant Thomas as containing more exact information thereof.

In answer to the third paragraph of the said bill the defendant says that the indebtedness so as aforesaid
51 mentioned & described in said deed of trust to the defendant Thomas has not long since been satisfied & discharged by the proceeds of the sale of the property in said deed mentioned, and herewith filed a statement of account between himself and the defendant Spalding, marked Exhibit W. W. R. No. 1, and prayed to be taken as a part, showing the amount remaining due & unpaid this defendant from the said William E. Spalding at the time of the conveyance to the defendant Bonnell, hereinafter referred to, to have been 1,827,968.00, and this defendant says the same is a true statement of the sum then due him from the said Spalding, and so secured by deed of trust as aforesaid; and the defendant denies that the said deed of trust was upon no consideration whatever, but says, on the contrary, that it was upon the consideration which, with interest thereon, finally aggregated the amount of $68,095.36,
52 as by the aforesaid exhibit will appear, and that therefore there is no shadow of justification for the charge that the said deed of trust was pretended, much less that it was fraudulent.

EXHIBIT W. W. R. No. 1. *Statement Wm. E. Spaulding.*

July 1st, 1873.		DR.	*Interest.*	*Total.*
Jones	From	Jun. 20, '71, on 5,740, @ 6 per cent.	843 78	6,583 78
Wendall	"	" 20, '70, on 8,000, bonus 1,107	1,656 00	16,760 00
Hill		on 1,000	1,500 00	11,500 00
Fant j'dg't	"	May 22, '71, on 223	28 21	251 21
Baker "	"	" 1, '74, on 139.54 & cost def.	39 46	179 00
Ice stock	"	Dec., '67, on 1,500	502 50	2,002 50
N. M. B. ½	"	Oct., '67, on 1,200	414 00	1,614 00
	"	" " 357	123 17	480 17
Riggs	"	Mar. 1, '68, 4,500	1,426 50	5,926 50
1st Nat. B'k	"	9,500	3,500 00	13,000 00
Van R.	"	July 1, '70, 2,947.34	884 20	3,831 54
Personal	"	Mar. 22, '70, 10,000	1,966 66	11,966 66
				68,095 36
		CR.		
		Interest in theater lots	22,250 00	
		Balance of property	2,877 36	
W. H. R.		Portion of insurance	15,000 00	
				40,127 36
				$27,968 00

53 The defendant admits the death of Maria P. Spalding without any exercise of the power of appointment in said deed of trust conferred, and leaving surviving her the children in the fourth paragraph of the complainant's bill referred to.

In answer to the 5th paragraph of the complainant's bill, this defendant says that the said indebtedness not having been paid & discharged, but, on the contrary, the sum remaining due this defendant from the defendant William E. Spalding, being that shown in the said Exhibit W. W. R. No. 1, this defendant was the virtual owner of the property so conveyed to secure the payment of the same; that, in addition, he was, at the time of the said deed of trust to the defendant Thomas, the equitable owner of one-half of lot (1), in square (161), although the same was standing in the name of the said Spalding, this defendant having supplied one-half the money for the purchase of the said lot; that the said remain-

54 ing lots being far less in value than the amount of his debt, he did not think it necessary to subject them to further diminution by reason of the expenses attending a public sale, but decided to take the same as a satisfaction of the indebtedness remaining due him from the said Spalding with a view to authorizing & directing, and did afterwards authorize & direct, their conveyance to the said Bonnell, to be held by him in trust for the children of the said Spalding as a gift to them from this defendant. This defendant has no knowledge where the complainant first obtained knowledge of the said deeds of trust, and that it might have been obtained at any time after they were made from the office of the recorder of deeds in this District.

In response to interrogatories (1), (2), & (3), this defendant refers to the statements already made in his answer & in Exhibit W. W. R. No. 1, & which he now repeats, as fully answering the same.

55 In response to interrogatory (4), he says that the said Spalding has not treated the said property as his own, to the knowledge of this defendant; & to interrogatory (5) he replies, not to his knowledge; and can only further say that he has heard the defendant Spalding say that a house was in process of erection there for the children of the said Spalding, but the defendant has never himself seen the house.

In response to interrogatory (7) to defendant Bo ..ell he says no consideration passed from the said Bonnell; and in response to interrogatory (9) to the same the answer is, no.

W. W. RAPLEY.

Subscribed and sworn to before me, Dec. 22d, 1880.

R. J. MEIGS, *Cl'k*,
By R. J. MEIGS, JR., *Ass't.*

56 *Replication Filed Jan.* 7, 1881.

In the Supreme Court of the District of Columbia.

JOHN VAN RISWICK
vs.
WILLIAM E. SPALDING *et al.* } No. 6569. Eq. Doc. 19.

The plaintiff joins issue upon the answer of the defendants.

T. A. LAMBERT,
Counsel for Plaintiff.

57 *Depositions on Behalf of Complainant.*

In the Supreme Court of the District of Columbia.

VAN RISWICK
vs.
SPALDING *et al.* } Equity No. 6569.

DISTRICT OF COLUMBIA,
County of Washington, } *ss:*

Be it remembered that at an examination of witnesses begun and held on the 21st day of January, A. D. 1881, and continued from time to time until 25th day of January, A. D. 1881, when the within depositions were taken, I, Irwin B. Linton, an examiner in chancery, did cause to be personally present, at No. 410 5th street, in the city of Washington, in said District, the within-named William W. Rapley to testify on the part and behalf of the complainant in the above-entitled cause; and I do hereby certify that, in pursuance of agreement of counsel, the annexed depositions were taken down
58 and by me reduced to writing in the presence of and from the statements of the several witnesses, at the time and place herein designated, and were by me read over to the witnesses, and by them subscribed in my presence, the witnesses having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for either of the parties to said cause, or in any manner interested therein.

IRWIN B. LINTON,
Examiner in Chancery.

Washington, D. C., February 17th, 1881.

59 In the Supreme Court of the District of Columbia.

VAN RISWICK *vs.* SPALDING *et al.* } Equity. No. 6569.

WASHINGTON, D. C., FRIDAY, *January* 21*st*, 1881.

Met pursuant to notice from counsel for complainant at No. 410 Fifth street, at 10.30 o'clock a. m.

Present: Messrs. T. A. Lambert and Bejnamin Davenport for complainant, and Leigh Robinson, Esq., of counsel for defendants.

Deposition of William W. Rapley.

WILLIAM W. RAPLEY, being first duly sworn, testified as follows:

Examined by Mr. DAVENPORT:

Q. Mr. Rapley, you have been made one of the defendants in this cause.

A. Yes, sir.

60 Q. Mr. William E. Spalding, one of the defendants, in his answer in this cause, filed May 24th 1879, states that ten thousand dollars and upwards of indebtedness secured as stated, and due William W. Rapley, was due and unpaid on the date mentioned and is still due and unpaid; referring to the date of the deed from you and Thomas and William E. Spalding to George W. Bonnell, is his statement correct?

A. Not as to the amount; he owed twenty-seven thousand dollars; he is mistaken on that point; he answered about that amount.

Q. In other respects was his answer in that record correct?

A. Yes, sir; I believe so.

Q. Then there is still due and unpaid to you ten thousand dollars and upwards from William E. Spalding which is secured by deed of trust to Thomas mentioned in these proceedings?

61 A. I hardly know how to answer that; but my understanding of that would be that he said he still owed me the amount if this conveyance is not correct. We passed receipts, as I thought it was essential to have some settlement with Spalding.

Q. Have you any written account of the amount of money that was settled by the property included in that deed of trust?

A. You have the book here, either you or Mr. Elliot; one side or the other. It was kept in a separate book.

[Counsel for plaintiff here says that he has never seen the book.]

Q. I wish to know what lots were sold under the deed of trust and in accordance with its terms and provisions.

A. All the lots with the exception of one that Spalding owned a half interest; I owned the other half. I believe that share
62 was a lot on Capitol Hill that Spalding never received any benefit from. I do not think his title was good.

Q. Then with the exception of a lot on Capitol Hill you have had sold all the lots included in that deed of trust under the provisions and terms?

A. Yes, sir.

Q. How many lots did you, Thomas and Spalding, convey to George W. Bonnell?

A. The lot on Connecticut avenue, I believe, and this Capitol Hill lot.

Q. Was the lot on Connecticut avenue included in the deed of trust to Thomas?

A. Yes, sir.

Q. Was that lot sold to Bonnell under the terms of that deed of trust?

A. I gave it to Bonnell for Spalding's children.

63 Q. Then there has been no sale under the deed of trust?

A. No; I suppose not; I gave it to him.

Q. Have you any written statement of amounts of money due from Spalding to you which was secured by that deed of trust?

A. Yes, sir.

Q. What sums were they that were thus secured?

A. One note of ten thousand dollars that I loaned Spalding, and the others were endorsements amounting to over twenty thousand dollars; some at Riggs Bank, at the First National Bank, Mr. John Van Riswick, and one, I think, at the Metropolitan Bank; that I was endorser, on amounting in all to twenty thousand dollars that I have endorsed for him.

Q. Did you pay the ten-thousand-dollar note for Spalding?

64 A. I loaned Spalding the money; the note belonged to me.

Q. Did you pay the sum of twenty thousand dollars on the notes you had endorsed for Spalding, which notes were secured by this deed of trust?

A. I have been paying ever since as fast as I could, but I think I have paid twenty thousand dollars.

Q. Have you any record of the amount you have paid?

A. I have some of the notes.

Q. Will you produce and file with the examiner all the notes on which you were endorser and which you have paid?

A. I think I can find most all, but if I do not it is a matter of record at the banks where the notes were paid. Some of the papers and books, I think, were burnt when the theatre was burnt.

65 Q. Did Mr. Spalding pay you any proportion of the ten thousand dollars that you loaned him?

A. No; I think he paid the interest on it for about eighteen months.

Q. Has he, from the date of the deed of trust to Thomas, paid you any moneys on account of those notes?

A. No, sir.

Q. I mean the notes you endorsed?

A. No, sir.

Q. Has William E. Spalding, or any one for him, paid you any moneys on account of any of the notes secured by that deed of trust?

A. No, sir.

Q. How much do you say was due you at the date of the execution of the deed to Bonnell from William E. Spalding?

66 A. Something over twenty-seven thousand dollars.

Q. Mr. Spalding had an interest in the National Theatre about that time, had not he?

A. Yes, sir.

Q. Did he not release or assign to you his interest in the National Theatre at that time? Was there not an understanding between him and you that upon such releasement or assignment all his indebtedness was cancelled?

A. No, sir.

Q. How much remained after that of the indebtedness on his assignment of his interest in the National Theatre?

A. I think about twenty-seven thousand, lacking some interest.

67 Q. At the time of the assignment of his interest in the National Theatre to you, you had caused to be sold all the lots of ground included in this deed of trust to Thomas, except two, had you not?

A. I believe so. I am not possitive whether they were all sold before that or I sold some afterward. I rather think they were all sold and I bought his interest in the theatre ground. There was no building when I bought, only the débris from the fire.

Q. Were there any writings drawn up between you and William E. Spalding at the time of the assignment of the theatre to you?

A. I have the deed.

Q. Was there any other writing?

A. No other; but a receipt from Spalding.

Q. A receipt for what?

A. Just a settlement.

68 Q. For what settlement?

A. Settlement of our affairs. I was satisfied to settle up the business; there was nothing left to pay me.

Q. At the time of the assignment of the interest in the National Theatre to you Mr. William E. Spalding drew up a receipt in settlement?

A. Yes, sir.

Q. So there was a settlement at that time between you and him as to the indebtedness due from him to you?

A. Well, I suppose you would call it a settlement. I gave up all hopes of getting pay from Spalding or Spalding'- estate, and I thought it essential to have some sort of receipt to wind the affairs up.

Q. Have you that receipt, and, if so, will you produce it here?

69 A. Yes, sir, I will; I believe I can put my hand on it.

Q. Can you give the date of that receipt?

A. I could not.

Q. There was still a trust property—one lot on Capitol Hill and a lot on Connecticut avenue—that had not been sold under the terms of the deed of trust; those pieces of property, you say, you caused to be conveyed to George W. Bonnell?

A. Yes, sir.

Q. Did Mr. William E. Spalding request a conveyance of those lots, or either of them, to Bonnell?

A. He asked me to give them to him to build a little home for his children.

Q. What were your business relations with William E. Spalding at the time of this conveyance, if any?

70 A. We were partners.

Q. Did William E. Spalding name the persons to whom he wished to convey that property?

A. Yes, sir; I think he named Bonnell.

Q. The deed was an absolute conveyance of the property to Bonnell without any trust being specified in it?

A. My impression was, it was to Bonnell in trust for Spalding's children; at least that is the way I intended it should be.

Q. Do you know who drew that deed up?

A. I do not.

Q. Why did you not convey the property directly to Spalding's children?

A. To keep his creditors from taking it from him.

71 Mr. ROBINSON: I do not think he exactly understood that question.

The WITNESS: I understood Spalding, and have had experience enough with him to know that if he had not old creditors enough he would soon make new ones; I wanted to put it out of Mr. Spalding's reach, or any one else, to take it from him, as I wanted it for those children.

Q. Did not Mr. Spalding say the same thing—that he wished it put in the name of Bonnell, so as to keep it from his creditors?

A. I think not, sir.

Q. Are you positive? Did not he mention the name of Bonnell for the purpose?

Mr. ROBERTSON: I object to this question, as it is cross-examination and not in the nature of the examination-in-chief, as this witness is the complainant's witness.

72 Mr. LAMBERT: But he is drawn from the ranks of the defendants.

A. Well, that I am not positive of; I think not.

Q. Under the deed of trust to Thomas it was necessary for you to give a written order for the sale of the property, and that the property should be sold at public auction?

A. I think you are wrong; I think I had the right to buy it at private sale or sell it at private sale.

Q. Were the other pieces of property sold at public auction?

A. I think all; I am not positive in that, but they were all sold to the best advantage, I believe.

Q. What value did you place upon the two lots conveyed to Bonnell?

A. Very little; the lot on Capitol Hill I did not consider
73 worth anything, so far as Spalding'- title was concerned; I had never derived any benefit from it, and the other half interest I never made any estimate of what it was worth.

Q. Was the legal title in the lot on Connecticut avenue in Spalding?

A. Yes, sir.

Q. Mr. Rapley, can you tell the date of the last sale made by you under the deed of trust to Thomas?

A. No, sir; not at present.

Q. Can you give the date of the assignment to you of Spalding's interest in the National Theatre?

A. Not from memory, I cannot.

Q. About what year?

A. It must have been in 1874—1873 or 1874. I may be mistaken in that, though. It burned down in 1873, I think, and the assignment was made during the following year, I believe.

74 By Mr. LAMBERT:

Q. You speak, Mr. Rapley, of certain accounts or statements of accounts between you and Mr. Spalding. Will you indicate when those statements were made, if more than one, and whether you have preserved duplicate copies?

A. I can produce the notes; I think I can produce the most of them, if not all. Spalding owed me so much money that it was not worth while for me to hunt up the details or pay clerk hire to do it.

Q. Then you never, in fact, made a formal statement of the account of your dealings together, but such statements as you have are in the form of promissory notes which you took up?

A. Yes, sir.

Q. And also the bills paid by you?

A. Yes, sir; it was a statement of the disposition of the
75 property, all the details, and they are in that book which Mr. Elliot has.

Q. When, according to your recollection, Mr. Rapley, was that book made up?

A. When was it made up?

Q. That is, were the entries made during the period of your business transactions?

A. Book relating exclusively to Mr. Spalding—his interest in his property, what it was sold for.

Q. Do you recollect when the last entry was made in that book?

A. I do not, but the book will show for itself. I cannot keep these things in my mind.

Q. Will you be kind enough to produce it?

A. I will if I can. I gave it to Mr. Elliot.

76 Q. Had you any other than business relations with Mr. Spalding at the time of the conveyance of the two lots in controversy to Bonnell?

A. No, sir.

Q. You have no family connection?

A. No, sir; our families have been very intimate, that is all—there is no relationship.

Q. Are you advised whether the children of Mr. Spalding have means of their own?

A. I think not.

Q. Do you know whether they had means of their own at the time of the conveyance to which reference is made?

A. I have no means of knowing, but I think not.

Q. Did you give instructions as to the drafting of the deed to Bonnell?

A. No, sir.

77 Q. Did you read it? Have you ever read it?

A. Well, I am not apt to read a deed that is handed me to sign, carefully; I don't know that I did; probably I glanced over it when it was handed to me for my signature.

Q. You are not in the habit of signing instruments of a solemn character without acquainting yourself with the contents, are you?

A. No.

Q. You remember the circumstances attending your signature of the deed in question. In other words, do you remember the time, place, and by whom submitted to you?

A. I don't remember the time, nor place, and I don't remember who brought me the deed.

Q. What negotiations had you, or did you make personally, with reference to the drafting and execution of that deed of conveyance of the property, and with whom?

78 A. With Spalding, I guess. I gave it to Spalding; told him I would give it to him, and he had the deed prepared and it was brought to me and I signed it.

Q. I think you stated that Mr. Spalding suggested to you the conveyance of this property. Will you state, if you can, what conversation passed between you at the time with reference to the proposed conveyance.

A. Yes, sir; he asked me to give him those lots so that he could build a little home for his children.

Q. Did he make any reference then to the amount of indebtedness that was still unpaid to you?

A. I don't know; I guess not. He knew he owed me a great deal of money, but he asked me to give it to him.

Q. Did you consent immediately to the conveyance?

79 A. Well, I don't know how long I took to consider it.

Q. Did you take any time to consider it?

A. I suppose I did—not long.

Q. Did you attach no value at all to the property?

A. Well, very little; I don't know that I have made an estimate even in my own mind as to what the lot was worth.

Q. Did you not reflect at the time that by making that conveyance you were probably depriving other creditors of Spalding of the means of securing the payment of their indebtedness?

A. I did not understand that I was, nor would I have done it had I thought I was interfering with anybody else's interest.

Mr. DAVENPORT: Will you produce here the deed of Rapley and Spalding to Bonnell?

80 A. I will if I can get it; I will ask for it.

Mr. LAMBERT: At whose instance was this deed prepared?

A. I suppose Mr. Spalding's.

Q. Will you state the reason, Mr. Rapley, that the consideration mentioned in that deed is twenty-five hundred dollars?

The WITNESS: The conveyance to Bonnell?

[COUNSEL:] Yes.

A. I don't know.

Q. When and by whom was this property on Connecticut avenue conveyed to Mr. William E. Spalding?

A. That I cannot answer.

Q. Do you know how long it had been in his possession or in his name previous to the deed to Bonnell?

A. I do not; but for a long time—

Q. Had you had any previous personal acquaintance with that property?

A. No, sir.

81 Mr. DAVENPORT: After the inspection of the papers requested from Mr. Rapley I will finish the examination-in-chief.

Mr. ROBINSON: After the deposition thus far given is written out and the examination-in-chief is given I will cross-examine.

Adjourned until Monday next at two o'clock.

MONDAY, *Jan. 24th*, 1881.

Met pursuant to adjournment. Present: Benjamin Davenport, Esq., for complainant, and R. K. Elliot, Esq., of counsel for defendant.

Continuation of Deposition of Wm. H. Rapley.

Examined by Mr. DAVENPORT:

Q. Have you searched for the receipt or settlement you mentioned in your examination on Friday last?

A. Yes, sir; you have it.

82 Q. Are the lots mentioned in this receipt the same as those mentioned in the deed from you, Thomas, and Spalding to Bonnell?

Mr. ELLIOT: I object to that question, because both of the papers speak for themselves.

A. Yes, sir.

Mr. ELLIOT: Please note the fact that the witness has neither the receipt nor the deed in his hand.

Q. Have you conveyed, or caused to be conveyed, to George W. Bonnell all the lots mentioned in this release or receipt or statement, whatever it is called?

A. I think so.

[Witness, after examining the receipt mentioned, says:] I feel satisfied that this is correct.

Q. Did you convey them by one or more deeds?

Mr. ELLIOT: My objection is continued to all these ques-
83 tions, because the witness is asked as to the contents of writing which are in existence and have not been shown him.

A. One deed only.

Q. What was the date of the assignment to you of Spalding's interest in the National Theatre?

A. That I cannot tell.

Q. That is impossible for you to say, is it?

A. From memory, I cannot tell.

Q. How long after the burning down of the theatre?

The WITNESS: How long after what?

Q. How long after the theatre was burned was this assignment made to you?

A. Well, that I cannot tell you from memory.

Q. Was it the year of 1874?

A. I think during the following year—following the year 1873, when it was burned.

84 Q. At that time you had a settlement, you stated in your examination the other day?

A. Well, if I did I made a mistake; I had no settlement; that receipt is the only settlement I have had. You are right about it; I did answer that way; but I was mistaken about it; the only settlement I had was that receipt. [After reading to the witness from his previous testimony, the counsel says:] Then there was no settlement at the time of the assignment to you of Spalding's interest in the theatre?

A. You have the only receipt, sir.

Q. Was there any agreement or understanding, either verbally or written, entered into between you and him upon the assignment of that interest in the theatre to you, in relation to his indebtedness to you?

A. Nothing but the deed, sir; I bought the interest and paid a liberal price for it.

Q. Was not his interest in the theatre set off against your claim against him?

85 A. You have a statement there in detail of all the money transactions—property and all; that accounts for every dollar.

Counsel for complainant here offers the receipt spoken of in evidence, and the same is marked Exhibit J. B. L. No. 1.

Adjourned until to-morrow morning at eleven o'clock.

86 EXHIBIT J. B. L. No. 1.

It is agreed this 27th day of March, A. D. 1876, between William W. Rapley and William E. Spalding, of the city of Washington, in the District of Columbia, in full and final settlement of all their partnership affairs and of all business heretofore existing between them, that the said Rapley does release and convey to George W. Bonnell (for such purposes as the said Spalding may direct) all the right, title, and interest of him, the said Rapley, in and to sub-lot No. 11, square 161; lot 3, in square 793; lot 10, in square 608; lot 9, in square 611; lot 6, in square 610, and lot 6, in square 612, in the city of Washington, in the District of Columbia, and in consideration of such release and conveyance the said Spalding does hereby release and acquit the said Rapley from any and all demand and claim whatever on account of their business aforesaid.

W. E. SPALDING.

87 In the Supreme Court of the District of Columbia.

VAN RISWICK *vs.* SPALDING *et al.* } Equity No. 6569.

WASHINGTON, D. C., TUESDAY, *January 25th*, 1881.

Met pursuant to adjournment.

Present: Messrs. Lambert and Davenport, for complainant, and R. K. Elliot, Esq., for defendants.

Continuation of Deposition of William W. Rapley.

By Mr. DAVENPORT:

Q. Mr. Rapley, the deed to Bonnell was executed on the same day as J. B. L. No. 1, was it not?

The WITNESS: Is that the receipt?

COUNSEL: Yes.

A. I believe so.

Mr. ELLIOT: Well, the deed is the best evidence. This
88 testimony is taken subject to objections, of course. Probably it is not the fault of Mr. Davenport that the deed is not here.

The WITNESS: I believe they were; I am not positive.

Q. Was there not also a duplicate of Exhibit J. B. L. No. 1, signed by you and delivered to Mr. Spalding?

A. I think not; I am not positive.

Q. Did you pass any papers to him?

A. Passed the deed; that is all I know of.

Q. The deed was the only — you recollect?

A. All that I have any recollection of.

Q. How many years had you been the partner of Mr. Spalding at that time?

A. Well, I do not know; I think from about 1863 we owned some property in partnership.

Q. Your final settlement on the 27th day of March, 1876?

WITNESS: Is that the date of that receipt?

COUNSEL: I think it is.

A. That is all the settlement we ever had.

89 Q. In the settlement of this partnership business was there a balance found to be due from you to Mr. Spalding?

A. No, sir.

Q. Do you recollect who drew up the deed to Bonnell?

A. I do not.

Q. Was this release Exhibit No. 1 drawn up at your request?

The WITNESS: Which do you call Exhibit No. 1?

COUNSEL: That. (Indicating the paper.)

A. Yes, sir.

Cross-examined by Mr. ELLIOT:

Q. At the time of the conveyance of March 27th, 1876, or prior thereto, were you indebted to William E. Spalding?

A. No, sir.

Q. Was William E. Spalding indebted to you?

A. Yes, sir.

Q. On what account?

90 A. One single note of ten thousand dollars that I loaned him.

Q. Have you got that note with you?

A. Yes, sir.

Q. Let me see it?

(Witness here hands a paper to counsel.)

Q. What other papers have you there?

WITNESS (handing counsel another paper): That is a copy of the deed of trust.

Q. You say that at the time of the conveyance referred to Spalding was indebted to you in one single note in the sum of ten thousand dollars?

A. Yes, sir.

Q. And you produce this note as the identical note?

A. Yes, sir.

COUNSEL: I offer this note in evidence.

(The note is filed in evidence and marked J. B. L. No. 2.)

91 EXHIBIT J. B. L. No. 2.

$10,000.00. WASHINGTON, D. C., *Dec. 19th*, 1867.

Ninety days after date I promise to pay to the order of Wm. W. Rapley ten thousand $\frac{0\,0}{1\,0\,0}$ dollars, value received, payable at ——, with int.

Due. WM. E. SPALDING.

[Endorsed across face: Secured by deed of trust, duly stamped.

Endorsements.

Received March 21st, 1868, one hundred & fifty-five dollars, interest on within note to date.

W. W. RAPLEY.

Received six hundred dollars, one year's interest to March 22d, 1869.

W. W. RAPLEY.

W. W. Rapley.

Received March 22d, 1870, six hundred dollars, one year's interest.

W. W. RAPLEY.

92 [Q.] Was anything paid upon this note except what appears upon the back of it?

A. Nothing.

Q. And these credits relate to the interest?

A. Yes, sir.

Q. So that the entire principal was due and unpaid at the time of this conveyance?

A. Yes, sir.

Q. Was this note described in and secured by the deed of trust to William H. Thomas?

A. Yes, sir.

Q. The other evidence of indebtedness described in and secured by that deed of trust were notes upon which you were endorser?

A. Yes, sir.

Q. Did you pay those notes?

A. I have.

Q. To what amount?

93 A. Over twenty thousand dollars. I think Mr. Van Riswick says I still owe him a little on those endorsements, but the others I have paid, and I think he has made a little mistake.

Q. *When* the transaction which related to this note and to the endorsements private transactions between you and Spalding as debtor and creditor?

A. What do you mean by private transactions?

COUNSEL: I mean between you as separate individuals, not as partners.

A. Yes, sir; separate individuals, I suppose.

Q. Have you furnished, in this cause, a statement showing the true account between you and the defendant Spalding, in respect of the proceeds of the sale of those pieces of property described in these proceedings as having been actually sold and converted into money?

A. Yes, sir.

94 Q. What became of the property described in the trust, which was not sold for the purpose of satisfying Spalding's indebtedness?

A. I believe it was all sold, with the exception of the lots I gave to Spalding's children.

Q. Did you mean to say that all was sold excepting that which is described in the deed from Thomas to Bonnell?

A. Yes, sir.

Q. You stated yesterday that you thought that all property specified in Exhibit J. B. L. No. 1 was embraced in the deed just referred to.

A. I think so.

Q. Are you positive about that?

A. Well, yes, I suppose I am, though I might be mistaken upon some number of a lot; I do not think I am mistaken.

Q. This exhibit describes sub-lot 11 in square 161, lot 3 in
95 square 793, lot 10 in square 608, lot 9 in square 611, lot 6 in square 610, and lot 6 in square 612. Now, if the deed does not contain the same lots that are here described, can you state what has become of the others—what disposition was made of them?

A. I cannot.

Q. Were any of the lots sold, according to the best of your recollection, after the date of this exhibit?

A. No, sir; I think they were all included in that.

Q. At the time, therefore, of the deed to Bonnell you have testified that there was an unsatisfied balance, secured by this trust, amounting to twenty-seven thousand dollars?

A. Yes, sir.

Q. And that is a fact?

A. Yes, sir.

96 Q. Did you intend or desire, at the time of the conveyance of this property to Bonnell, to defraud any of the creditors of Spalding?

Mr. DAVENPORT: I object to any oral statement of the intent of Mr. Rapley or Mr. Spalding, as it is set forth in a written document here offered in evidence.

WITNESS: No, sir.

Q. You knew that Spalding was indebted in an amount largely in excess of the value of this property?

A. Yes, sir.

Q. And that the property was, therefore, virtually your own?

Mr. LAMBERT: I object to that question as argumentative.

WITNESS: Yes, sir.

Q. And you consented, if I understand your testimony, that it might be conveyed to Bonnell in trust for Spalding's children?

97 Mr. DAVENPORT: I object to that question.

WITNESS: Yes, sir.

Q. And that was the purpose of the conveyance, as you understood it?

A. Yes, sir; I looked upon it as a willing conveyance to Spalding's children.

Mr. DAVENPORT: I object to this testimony, as it is an attempt to alter a written document.

Q. Did you intend, Mr. Rapley, to give it either directly or indirectly to Bonnell in trust for Spalding's creditors, if he had any, or for Spaldings himself?

Mr. DAVENPORT: I object to that question for the same reason.

WITNESS: For Spalding's children I gave it.

Q. Have you ever been paid, either directly or indirectly, the amount which was due you at the time of this conveyance?

98 A. No, sir.

Q. A paper writing has been submitted in evidence in this cause, marked Exhibit J. B. L. No. 1, signed by William E. Spalding, in which it is stated that Spalding and yourself, in full and final settlement of all partnership affairs and all business heretofore existing between you, that you released and conveyed to Bonnell, for such purposes as the said Spalding may direct, all the right, title, interest, &c., in certain described property; and it is also stated that in consideration of such release and conveyance the said Spalding does hereby release and acquit the said Rapley from any and all demands and claims whatever on account of their business aforesaid; what claims had Spalding on you?

A. None.

Q. Who drew this paper?

A. Mr. Morris.

Q. Was he your counsel?

A. Yes, sir.

99 Q. Did you communicate the object of this settlement to Mr. Morris?

A. Nothing more than I wanted a receipt.

Q. But in point of fact, at the time this receipt was drawn, you were not in anywise indebted to Spalding?

A. No, sir.

Q. And there was nothing for Spalding to acquit you from?

Mr. LAMBERT: I object to that question as incompetent.

WITNESS: No, sir.

Q. Having expressed a willingness to have this property conveyed in trust for Spalding's children, you signed the deed to Bonnell when it was tendered to you for that purpose, did you not?

Mr. LAMBERT: I object to the question.

WITNESS: Yes, sir.

Q. Mr. Rapley, who proposed the form of this receipt, Exhibit J. B. L. No. 1?

A. I did not. I simply said I wanted a receipt of some

100 kind showing that Spalding and I had a settlement.

Q. Had you communicated to your counsel the fact that Spalding was your debtor and you not his?

A. Yes, sir; I am confident I did.

Q. What did you mean in reference to the purchasing of Spalding's interest in the theatre property? You state that you had received a deed from him; what interest had he in that property?

A. I allowed or paid him for one-half, but his interest really was four-tenths. This the last balance sheet showed. It shows that on the property I had expended sixty thousand dollars, and Mr. Spalding's interest amounted to forty thousand dollars, but when I purchased I allowed him one-half.

Q. But this indebtedness of twenty-seven thousand dollars, which, you say, was secured by the deed to Thomas, was independent of that?

101 A. Yes, sir; over that. He owed me at the time over twenty-seven thousand dollars—that did not include minor details, such as taxes, &c.

Q. And you are stil- the holder of this note which is unpaid and secured by this trust?

A. Yes, sir.

Q. Have you in your possession the notes paid by you upon which you are endorser, which were also secured by this trust?

A. Some I have, and some of them are lost; some, I think, were burned when the theatre was burned.

Q. Did you ever communicate to any one the circumstances attending the settlement between you and Spalding, and the fact that you had given this property to Spalding's children?

A. I do not know that I talked to any one.

Q. What persons, if any, were cognizant of the transaction at the time?

102 A. No one but Mr. Morris, or some one in his office.

Q. Of course you did not consult Mr. Morris about the form of this deed to Bonnell?

A. No, sir.

Q. Who brought the deed to you?

A. That I cannot tell you who brought it.

Q. Mr. Rapley, sub-lot 11 in square 161, I believe, is the Connecticut avenue lot?

A. Yes, sir.

Q. State whether you had any equitable interest in that lot.

A. I owned one-half.

Q. Well, how did you own one-half?

A. I paid half the purchase money.

Q. Well, how did the title happen to get *into* Spalding?

103 A. Oh! well I do not know. I did not think it worth while to include both. I do not know how that happened. I know I furnished one-half the money to pay for the lot.

Q. And you considered that you were the owner of a one-half interest in the property?

A. Yes, sir.

COUNSEL: Quite natural, too. My recollection of the property conveyed in the deed to Bonnell is that only two or three pieces were embraced, whereas this receipt appears to exbrace six pieces.

Have you any explanation of the difference between the deed and the receipt?

A. Well, it is impossible for me to remember the numbers. I gave him some different lots. I do not know where they are. I could not find one of them now.

Q. State what led you to make this provision for Spaulding's children, that you have testified to.

104 A. Our families were always intimate. I believe that Spalding's children looked upon me as a friend, and I think if one of my children should go to Spalding and ask for help he would divide with him.

Q. Was there any other motive than that of generosity to them?

A. None in the world.

Q. I presume you were abundantly able to make the gift?

A. Yes, sir; I think so.

[Counsel here offers in evidence a deed of trust from William E. Spalding *et al.* to Thomas, and the same is marked Exhibit J. B. L. No. 3.]

105 EXHIBIT J. B. L., No. 3.—*Trust Recorded December 20th*, 1867.

William E. Spalding *et al.* to Wm. H. Thomas.

This indenture, made this nineteenth day of December, in the year eighteen hundred and sixty-seven, between William E. Spalding and Miria P. Spalding, his wife, of the first part, and William H. Thomas, of the second part, all of the county of Washington, in the District of Columbia; whereas the said William E. Spalding is indebted to William W. Rapley, of the said county and District, in the full and just sum of ten thousand dollars, for which sum the said Willian W. Rapley holds his, the said Spalding'-, single promissory note, bearing even date with these presents, drawn to the order of said Rapley and payable in ninety days after date with interest; and whereas the said William W. Rapley has endorsed several promissory notes drawn by said Spalding in favor of several creditors of the said Spalding, amounting in all to about the sum of

106 twenty thousand dollars; and whereas the said party of the first part are desirous to secure the prompt payment at maturity of the said promissory note of ten thousand dollars, together with all the costs and interest which shall or may have accrued thereon, and also to secure said Rapley from all and any loss by reason of his endorsement of the promissory notes aforesaid: Now, therefore, this indenture witnesses that for and in consideration of the premises, and for the further consideration of five dollars current money to them, the said parties of the first part, in hand paid by him, the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, they, the said parties of the first part, have given, granted, bargained, and sold, aliened, enfeoffed, conveyed, released, and confirmed, and by these presents give, grant, bargain, and sell, alien,

enfeoff, convey, release, and confirm unto him, the said party
107 of the second part, his heirs and assigns forever, all those pieces and parcels of land lying and being in said city of Washington, D. C., and hereafter described, to wit: Lot No. (4) four in square one hundred and twenty-one (121), fronting on F St. north, at the corner of 20th St. west, seventy-one feet six inches (71 ft. 6 in.), and running back of that width on- hundred and twenty-eight feet and eight and one-half inch- (128 ft. 8½ in.), to an alley.

Also part of original lot eleven (11) in square numbered three hundred and sixty-nine, beginning for the same at a point on 10th St. west, forty feet from the intersection of said 10th street with M street north, and running thence east one hundred feet to the dividing line between said lot eleven and lot twelve, in same square; thence south along said dividing line twenty (20) feet; thence west one hundred (100) feet to the line of said 10th street; thence north with the line of said street to the place of beginning, being
108 the same piece or parcel of land and premises conveyed to said Wm. E. Spalding by Amos Baldwin and wife by deed bearing date 21st of March, 1851, and recorded in liber J. A. S. No. 30, fol. 37.

Also lots No. 51, 52, 53, in square one hundred and eighty-three (183), according to Spalding subdivision thereof, recorded in the office of the city surveyor March 5th, 1866, being the same property conveyed to Southey S. Parker and Wm. E. Spalding by Ottro Muncaster *et al.* by deed dated 30th of August, 1863, and recorded in liber 12 N. C. T. No. 38, fol. 235, and conveyed by said Parker and wife to said Spalding by deed dated 11th Feb., 1867, and recorded in liber R. M. H. No. 31, fol. 143. Also lot numbered (1) in square numbered fifty-six (56), not heretofore conveyed by the said Wm. E. Spalding to Horace S. Johnson by deed bearing date the 19th day of March, 1863, and recorded in liber N. C. T. No. 3, fol. 231, being the same property conveyed to the said Spald-
109 ing by John Watts and wife by two deeds bearing dates respectfully 15th of March, 1862, and 16th of March, 1863, and *and* recorded in liber J. H. S. No. 217, fol. 399, and liber N. C. T. No. 1, fol. 195, respectively.

Also east part of lot number three (3), in square seven hundred and ninety-three (793), beginning for the same at the southeast corner of said lot, running thence north one hundred and forty-four feet and three inches (144 ft. 3 in.); thence west forty-two (42) feet; thence southeastwardly about one hundred and forty-four feet 3 in. *inches* (144 ft. 3 in.) to the line of E St. south; thence along the line of said street thirty-five feet six inches (35 ft. 6 in.) to the place of beginning; being the same piece or parcel of ground conveyed to the said Wm. E. Spalding by deed bearing date the 20th November, 1866, from James C. Kenneday *et al.*, and recorded in liber R. M. H., No. 26, fol. 42.

Also one undivided half of lot numbered sixty-four (64), in
110 square numbered six hundred and seventy-seven (677), it being the same property conveyed to the said Wm. E. Spalding and W. W. Rapley by deed bearing date the 4th March, 1864 from John Harkness, and recorded in liber R. M. H. No. 6, fol. 18.

Also the whole of lot number four (4) and part of lot three (3), in square two hundred and fifty-four, being the property now known as the National Theatre, and the same property sold under a decree of chancery in a proceeding in which Lenomon & Brothers were plaintiffs and Wm. H. Winder *et al.* were defendants, to the said Wm. E. Spalding—the said parties hereto of the first part hereby bargains, sells, and convey one undivided half in said pieces or parcels of ground and premises.

Also one undivided half of lot numbered one (1), in square one hundred and fifty-eight (158), being the same piece or parcel of ground conveyed to Wm. E. Spalding and John E. Wilson by deed dated 5th February, 1861, from Thomas J. Fisher,
111 trustee, and recorded in liber J. A. S. No. 220, fol. 123.

Also parts of original lots numbered sixteen (16) and seventeen (17), in square numbered two hundred and ninety-three, the said lots being particularly described in and being the same which were conveyed by certain deed from Richard Smith, trustee, to Richard Gibson, which said deed has been duly recorded in liber W. B. No. 128, fol. 48, and being the same pieces and parcels of land conveyed to said Wm. E. Spalding by Wm. B. Todd by deed bearing date 29th September, 1862, and recorded in liber N. C. T. No. 1, fol. 197; also sub-lot numbered eleven (11), in square numbered one hundred and sixty-one (161), being part of original lot numbered one (1), beginning for the same at the northeast corner of said original lot numbered one (1) on Connecticut avenue, and running thence along the line of said avenue southeastwardly twenty (20) feet, and running back of that width to the dividing line between said
112 original lot number one (1) and original lot number two (2) in the same square. Also part of lot twenty-five, in square one hundred and seventy-two (172), beginning for the same at the southeastern corner of said lot and running thence north eighteen (18) feet; thence west eighty (80) feet; thence south eighteen (18) feet; thence east eighty (80) feet to the place of beginning. Also one undivided ninth part of square west of square numbered four hundred and seventy-one (471), being the same piece or parcel of land conveyed to Wm. E. Spalding by Thomas Stackpole by deed dated 6th September, 1865, and recorded in liber N. C. T. No. 63, fol. 203, together with all and singular the buildings, improvements, rights, ways, privileges, and appertenances and other hereditaments to the said piece or parcel of land hereby bargained and sold, belonging or in any manner appertaining, and the remainders,
113 reversions, rents, issues, and profits thereof, and all the rights, title, interest, and estate of them, the said parties of the first part, in and to the same, in law or equity.

To have and to hold the said pieces or parcels of land and premises hereby bargained and sold unto the said party of the second part, his heirs and assigns forever, to his and their sole use, benefit, and behoof forever, in trust, nevertheless, for the following purposes and objects, to wit: That of the said Wm. E. Spalding shall fail to pay or cause to be paid at maturity the said promissory note for ten thousand dollars, with all costs and interest which shall have ac-

crued thereon, or if he shall have failed, any or all of said notes, with interest and cost, upon which the said Rapley's endorsement appears, or shall fail to pay any one of said notes, or any part of the interest and cost thereon, as the same shall become due, then, in either of said cases, the said party of the second [part] shall, upon the written order of said Rapley, proceed to sell at public
114 auction, to the highest bidder, all the said pieces or parcels of land and premises, or so much thereof as may be necessary, first giving twenty days' notice in some newspaper published in the city of Washington, D. C., upon such terms and conditions, at such time and place, and after such postponements as he shall deem most advantageous to all parties concerned, and upon this further trust that the said William W. Rapley be, and hereby *he* is, authorized to order and direct the trustee at any time during the continuance of this trust to sell and dispose of all said pieces or parcels of land and premises, and any portion thereof, at private sale to such person or persons and upon such terms and conditions as he, the said Rapley, shall deem most advantageous to all parties concerned, and the said trustee shall, upon the written order of said Rapely, make, seal, and deliver to the purchase- or purchasers thereof a g[illegible]
115 sufficient conveyance in fee-simple, and the proceeds of all sales made under this trust shall be distributed as follows:

First. To pay all the proper and necessary expenses incurred in executing this trust, including five per centum to the trustee for his trouble in the faithful execution of this trust.

Secondly. To pay all said promissory notes, and costs and interest thereon, which shall have become payable.

Thirdly. To pay all of said promissory notes, and interest and costs thereon, whether the same shall have become due and payable or not, the same to be treated as presently due upon default in payment of any one, and lastly to pay over to the said parties of the first part, their executors and administrators, the balance of such proceeds; and upon this further trust that the said trustee shall stand seized of all the aforementioned real estate which shall remain unsold, after the liens aforesaid shall have been paid and
116 satisfied, to the sole use, benefit, and behoof of the said Maria P. Spalding (wife of said Wm. E. Spalding) and their children; and the said Maria P. Spalding shall have full power, at any time or times during her life, and notwithstanding her present or future coverture, by any deed in writing, under her hand and seal, to be executed in the presence of two or more witnesses, to direct the said property, or any part thereof, to be sold and disposed of absolutely and immediately, or to be mortgaged to such persons or persons for such sums and upon such terms as she shall think proper to designate, in and by such deed, in writing; and it shall be the duty of said trustee, for the time being, to carry into complete execution, by all proper deeds and conveyances and acts, the said directions by the said Maria P. Spalding, and the proceeds of such sales or mortgages to pay over to her upon her single receipt in writing, or at her election to invest the same in such manner

and in such property, real or personal, as the said Maria P.
117 Spalding shall request in writing, as aforesaid.

In testimony whereof they, the said parties of the first part, have hereunto set their hands and seals the day and year first hereinbefore written.

WM. E. SPALDING. [SEAL.]
MARIA P. SPALDING. [SEAL.]

Signed, sealed, stamped, and delivered in the presence of—
JNO. H. McCUTCHEN.
WM. H. JAMES.

[Rev. Stamps, $30.00.]

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, John H. McClutchen, a notary public in and for the county and District aforesaid, do hereby certify that Wm. E. Spalding, a party to a deed bearing date the 19th day of December, 1867, and hereto annexed, personally appeared before me, in my county aforesaid, the said William E. Spalding, being personally well known to me as the party who signed the same, and acknowledged the
118 same as his act and deed. I also further certify that Maria P. Spalding, the wife of the said Wm. E. Spalding, also a party to the said deed bearing date as aforesaid and hereto annexed, personally appeared before me, in my county aforesaid, the said Maria P. Spalding, being well known to me as the party who executed the said deed, and being by me examined privily and apart from her said husband, and having the deed aforesaid fully explained to her by me, she, the said Maria P. Spalding, acknowledge the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Witness my hand and seal, this 19th day of December, 1867.

JOHN H. McCUTCHEN,
Notary Public.
[SEAL OFFICIAL.]

119 Endorsement: This is to certify that the within is a true and verified copy of a deed as recorded in liber E. C. E. 24, fol. 291, *et seq.*, one of the land records of this office. Washington, D. C., April 15, 1873. S. Wolf, recorder. Gen'l Schayer, dep. Feb. 16th, April, 1873.

120 Q. No money passed between you and Spalding at the time of the delivery of Exhibit No. 1?

A. No, sir.

Q. You were asked, in your direct examination, why you did not convey this property to Spalding's children, and your answer is "to keep his creditors from taking it from him." What did you mean by that?

A. Well, I only meant I wanted it for his children, and not for his creditors, since it was a gift from me.

Q. As between his creditors and yourself you would have held the property?

A. Yes, sir; and a great deal more if I had had it.

Q. You were requested at the first session of this examination to produce a certain book in which the account between Spalding and yourself was kept, and from which the statement filed was prepared. Have you produced that book?

121 A. No, sir. I think I gave you that book; you, or counsel on one side or the other.

Q. You have not been able to find it?

A. No, sir.

Q. You had it?

A. Yes, sir; I had it.

Q. Do you recollect to whom you delivered it?

A. I delivered it to you.

COUNSEL: I think he did too.

WITNESS: I wanted to get it from you and give it to Mr. Lambert, because it related to every transaction with reference to the property.

Q. In your direct testimony you say in answer to this question, "What negotiations had you or did you make personally with reference to the drafting or execution of that deed of conveyance of the property, and with whom?" and you answered, "With Spalding, I guess. I gave it to Spalding, told him I would give it to him,

122 and he had the deed prepared and [it] was brought to me, and I signed it." Did you mean to say that you gave the property to Spalding?

A. No, sir; I meant to give it to Spalding's children?

Mr. DAVENPORT: He meant the deed.

Mr. ELLIOTT: No, sir; it don't read that way.

Q. You have also testified that Spalding asked you to give him the lots. You never agreed to give them to him, did you?

A. No, sir; he asked me to give him the lots to build a house for his children.

Q. I will ask you to state whether you now recollect anything with reference to the lots mentioned in the receipt, Exhibit J. B. L. No. 1, and not mentioned in the deed to Bonnell.

A. Yes, sir. I know I owned the lots there.

123 Q. State the fact as to why they were not mentioned in the deed after being mentioned in the receipt.

A. The fact is that they belonged to me.

Q. Had Spalding any interest in them?

A. No, sir.

Q. And that accounts for them being omitted in the deed. No one else had any interest in any of them besides yourself?

A. Yes, sir. Mr. Stackpole had a little interest to them.

Q. Where were these lots, Mr. Rapley?

A. Down by the brick-yards near the old Arsenal, I think.

Redirect examination by Mr. DAVENPORT:

Mr. DAVENPORT: In what square were they?

A. I do not know the No. of the squares.

Q. Mr. Rapley, since March 27th, 1876, has the note that
124 you have offered in evidence been delivered up by you to Mr. Spalding?

A. No, sir; it has never been out of my possession; that is a queer question.

Q. In your opinion, then, that note is still good against Mr. Spalding?

A. I have never received a dollar, only what is marked on the back of that note.

Q. In March, 1876, you desired to have a settlement with Mr. Spalding with your business affairs, partnership and otherwise?

A. Yes, sir; I had not any but the deed.

Q. That is, the deed of this property?

A. Yes, sir; I do not know about the date.

COUNSEL: That is, the date of this paper?

A. Yes, sir: I was satisfied that there was no more to pay me, and I thought it best to have some sort of a receipt.

125 Q. And with that intention you desired a paper similar to this to be drawn for the purpose of protecting you against Spalding in the future if he should want to bring up the old matters again?

A. I have no recollection of any paper similar to that.

Q. I mean the same form?

A. Yes, sir.

Q. Yo wanted this paper drawn to prevent future embarrassments or trouble with him?

A. I did not anticipate any future embarrassments; I thought it requisite to have some sort of receipt.

Q. This Mr. Spalding signed and you have since kept?

A. Yes, sir.

Q. From whom did Mr. Spalding buy the Connecticut avenue property?

Mr. ELLIOT: I object to that queetion, because it has been asked by the examination-in-chief and answered "that the witness did not know."

126 Mr. DAVENPORT: He did not answer, and it is very germane to the question involved.

WITNESS: That I do not know.

Q. When did he buy it?

A. That I could not tell you. It is a long time ago. It is impossible for me to keep these things in my mind, or for any one else, I think.

Q. About how many years ago?

A. Probably in 1864 or 1865, though I cannot tell; it was a long time ago.

Q. Mr. Rapley, do you now state the conveyance to Bonnell of the two pieces of property mentioned in that deed to have been a voluntary gift from you to Spalding's children?

A. Yes, sir.

Q. Why have you never delivered up the ten-thousand-dollar note that has been offered in evidence here to the maker of it?

A. Because it belonged to me. It has never been out of my possession.

127 Q. It is due and unpaid?

A. Yes, sir.

Q. The difference between that and twenty-seven thousand dollars, has that been unpaid?

A. No, sir.

Q. Is that due and unpaid?

A. Yes, sir.

Q. Then you have a claim against William E. Spalding of twenty-seven thousand dollars?

A. Yes, sir; he owed me that much money that he has never paid.

Q. Having that claim against him, which was secured by the deed of trust to Thomas, you voluntarily gave all the trust property—the two lots mentioned in the deed to Bonnell—to Bonnell for the purpose indicated?

Mr. ELLIOT: I object to the form of that question, since it
128 implies that the trust secured the full twenty-seven thousand dollars (explaining the question)—that is, for Spalding's children.

The WITNESS: Yes, sir.

Q. Did you receive money or other consideration for the conveyance of those lots?

A. No, sir.

W. W. RAPLEY.

Subscribed and sworn to before me, this 8th day of February, A. D. 1881.

IRWIN B. LINTON, *Examiner.*

Testimony on part of complainant closed.

IRWIN B. LINTON, *Examiner.*

129 *Decree Dismissing Bill with Costs. Filed Mar.* 17, 1881.

In the Supreme Court of the D. C.

JOHN VAN RISWICK
vs.
WM. E. SPALDING *et al.* } Equity. 6569.

This cause coming on to be heard at this term, and having been argued by counsel and duly considered, it is by the court this 17th day of March, A. D. 1881, adjudged, ordered, and decreed that the bill be, and hereby is, dismissed, with costs.

By the court: A. WYLIE.

130 *Appeal.*

In the Supreme court of the District of Columbia.

J. VAN RISWICK
vs.
WM. E. SPALDING *et al.* } 6569. Eq. Doc. 19.

Note appeal from the decree at special term.

T. A. LAMBERT,
Sol'r for Compl't.

March 17th, 1881.

131 *Appeal.*

In the Supreme Court of the District of Columbia, the first day of November, 1881.

JOHN VAN RISWICK
vs.
WILLIAM E. SPALDING *et al.* } Eq. No. 6569.

Know all men by these presents, that we, John Van Riswick and Charles B. Church, of Washington City, D. C., are bound unto the above-named William E. Spalding, William L. Spalding, James B., Annie, and Nettie Spalding, George W. Bonnell, William H. Thomas, and W. W. Rapley in the sum of two hundred dollars, to be paid to the said defendants, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this first day of November, 1881.

Whereas the above-named complainant has prosecuted his appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia, in general term:

Now, therefore, the condition of this obligation is, that if the above-named complaint shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

(Signed) JOHN VAN RISWICK. [SEAL.]
(Signed) C. B. CHURCH. [SEAL.]

Sealed and delivered in presence of—
R. J. MEIGS, JR.

Approved Nov. 1st, 1881.

D. K. CARTTER,
Ch'f Justice.

132 *Authentication of Record.*

Clerk's Office, Supreme Court of the District of Columbia.

Clerk's Certificate.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 8th day of November, 1881.

[Seal of the Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal, this 8th day of Nov., 1881.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 8th day of November, 1881.

[Seal of the Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Endorsed on cover: Dist. of Col. supreme court. No. 156. John Van Riswick, appellant, *vs.* William E. Spalding, William L. Spalding, James B. Spalding, Annie Spalding, Nettie Spalding, George W. Bonnell, William H. Thomas, and William W. Rapley. Filed 1st November, 1882.

No. 156 S.C.U.S.

117-370

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

IN GENERAL TERM—Monday, October 24, 1881.

Session resumed pursuant to adjournment. Present Chief Justice CARTER and Justices HAGNER and JAMES.

JOHN VAN RISWICK, *Complainant,*
vs.
WILLIAM E. SPALDING *et al.*, *Defendants.*
} In Equity, 6569. Cal. No. 102.

This cause came on to be heard at the present term and was argued by counsel:—Where, upon consideration thereof, it is ordered, adjudged and decreed by the Court here that the decree of the Special Term of March 17, 1881, dismissing the bill with costs, from which the Complainant appealed on the 1st of April 1881, by an entry on the Order Book 8, p. 112, be and the same is hereby affirmed with costs:—From which decree now here in open Court the Complainant prays an appeal to the Supreme Court of the United States, and the same is allowed.

A true copy:

[SEAL.]

R. J. MEIGS,
Clerk. &c.
By R. J. MEIGS, JR.,
Asst. Clerk.

MAR 6 1886

117-370

Supreme Court of the United States.

OCTOBER TERM, 1885.

JOHN VAN RISWICK, *Appellant*,

vs.

WM. E. SPALDING, WM. SPALDING, JAMES R. SPALDING, ANNIE SPALDING, NETTIE SPALDING, GEORGE W. BONNELL, WM. H. THOMAS, and WM. W. RAPLEY, *Appellees*.

No 156

Brief of Counsel for Appellant.

T. A. LAMBERT,
Of Counsel for Appellant.

R. O. Polkinhorn & Son, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1885.

JOHN VAN RISWICK, *Appellant*,

vs.

WM. E. SPALDING, WM. L. SPALDING, JAMES R. SPALDING, ANNIE SPALDING, NETTIE SPALDING, GEORGE W. BONNELL, WM. H. THOMAS, and WM. W. RAPLEY, *Appellees*.

Brief of Counsel for Appellant.

STATEMENT.

This is an appeal from a decree of the Supreme Court of the District of Columbia, passed on the 17th day of March, 1881, dismissing the original and amended bills.

The original bill was filed on behalf of the judgment creditors of Wm. E. Spalding, December 24, 1878.

The following facts are developed by the record:

May 13, 1866, Spalding owed the National Bank of the Metropolis $1,480.00; May 14, 1866, he owed the additional sum of $1,330.00, and this was increased Oct. 1, 1867, by the sum of $462.49, making a total indebtedness to the bank of $3,272.49, for which judgment was recovered on the law side of the Supreme Court of the District of Colum-

bia, February 6, 1868, and, the writ of *fieri facias* having been duly issued, the same was returned *nulla bona*. October 2, 1863, the judgment was assigned to appellant and has never been paid.

Being thus indebted, December 19, 1867, Spalding (who it is not pretended was possessed of personal property) conveyed all his real estate to Wm. H. Thomas in trust (first) to secure a debt of $10,000 and a contingent liability, on endorsements, of $20,000 to Wm. W. Rapley; and (secondly) to hold the real estate that might remain unsold after satisfaction of such trust to the separate use of Maria P. Spalding, the wife of Wm. E. Spalding, and their children, and to such uses as Mrs. Spalding, during her lifetime, might, in writing, appoint. (See Record, p. 33.)

Mrs. Spalding died without having attempted to exercise the power thus sought to be conferred upon her.

By the answer of Wm. E. Spalding it appears "that the aggregate amount of the sales" (of the property embraced in the deed of trust) "was $22,046.46, and $22,046.46 was applied to the indebtedness secured by the aforesaid trust." (Record, p. 10.)

On the 27th day of March, 1876, Spalding and Rapley, who had been in co-partnership relations, touching, among other things, the National Theatre property, in the City of Washington, came together and settled all matters growing out of said partnership, and all other matters of mutual dealing between them, and, *at the request of Rapley*, Spalding executed the following release:

"It is agreed this 27th day of March, A. D. 1876, between Wm. W. Rapley and Wm. E. Spalding, of the City of Washington, in the District of Columbia, *in full and final settlement of all their partnership affairs, and of all business heretofore existing* between them, that the said Rapley does release and convey to George W. Bonnell, for such purposes as said Spalding may direct, all the right,

title, and interest of him, the said Rapley, in and to sub-lot No 11, square 161; lot 3, in square 793; lot 10, in square 608; lot 9, in square 611; lot 6, in square 610; and lot 6, in square 612, in the City of Washington, in the District of Columbia, *and in consideration of such release and conveyance the said Spalding does hereby release and acquit the said Rapley from any and all demand and claim whatsoever on account of their business aforesaid.*

WM. E. SPALDING.

Simultaneously the following deed was executed and recorded:

This indenture, made this 27th day of March, in the year of our Lord, eighteen hundred and seventy-six, between Wm. E. Spalding, of Washington city, District of Columbia, of the first part; Wm. H. Thomas, of the city of Louisville, Jefferson County, State of Kentucky, of the second part; Wm W. Rapley, of Washington city, District of Columbia, of the third part, and Geo. W. Bonnell, of the aforesaid City of Washington, District of Columbia, of the fourth part. Whereas, the above named Wm. E. Spalding, by his certain deed of indenture, bearing date on or about the (19th) nineteenth day of December, eighteen hundred and sixty-seven, and duly recorded, did bargain, sell, grant and convey unto the above named Wm. H. Thomas and his heirs, sundry parcels or lots of land situate and lying in the City of Washington, District of Columbia, and among others that certain part or portion known as sub-lot, numbered eleven (11) being part of original lot numbered one (1), in square number one hundred and sixty-one (161), and also that other certain part or portion being known as lot numbered three (3), in square numbered seven hundred and ninety-three (793), both of which will be more fully described hereafter, in trust, among other things, that on the request and order of the above named William Rapley, the aforesaid William H. Thomas would and should sell and convey the said several pieces or parts of lots of land, or any of them, in the said deed of indenture described and conveyed, and apply the proceeds of such sale or sales in the manner therein described; and also in further trust that the said William H. Thomas, and his heirs, should and would hold such of said pieces or lots of lands, as he would

not be required to sell and convey by the request and order of the said William W. Rapley, all of which, on reference to the hereinbefore and in part recited deed of indenture, duly recorded on or about the twentieth (20th) day of December, eighteen hundred and sixty-seven, in one of the land records, Liber E. C. E., No. 24, folio 291, for the County of Washington, District of Columbia, will fully and at large appear.

And whereas since the execution and delivery of the aforesaid in part recited deed of indenture, the aforementioned William E. Spalding has, with the knowledge and consent, and full approval of the aforementioned William W. Rapley, bargained and sold unto the aforementioned Geo. W. Bonnell, to his heirs, and his and their sole use and benefit, the pieces, parcels or parts of lots hereinbefore and again hereafter particularly mentioned and described, and with the intent to ratify, confirm, make sure and fully effectuate the said last mentioned bargain and sale, according to the true intent and meaning thereof, and of the parties thereto, the said William W. Rapley, in the exercise of the power vested in him by and under the deed of indenture first hereinbefore referred to, has requested and directed and being a party thereto, doth now and by these presents again request and direct, the aforesaid William H. Thomas, trustee as aforesaid, to sell, convey, and release and confirm unto the aforesaid Geo. W. Bonnell, and his heirs, unto his and their sole use, and free, clear and forever discharged of and from any and every trust mentioned, in the in part recited deed of indenture, and free, clear and forever discharged also of and from any and every interest, estate, title, claim or demand at law or in equity of the said William W. Rapley, of, in or to the said hereinafter described pieces, parcels, or parts of land, with the appurtenances thereto belonging.

Now, therefore, this indenture witnesseth that, for and in consideration of the premises, and of the sum of twenty-five hundred dollars ($2500.00) to them in hand paid at or before the signing and delivery of these presents by the aforesaid Geo. W. Bonnell, the receipt whereof is hereby acknowledged, the parties hereunto of the first, second and third parts respectively, and each according to his interest, estate or title therein, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said Geo. W. Bonnell and his heirs, all that certain piece or parcel of

ground situate and lying in Washington City, District of Columbia, known as sub-lot numbered eleven (11), being part of original lot numbered (1), in square numbered one hundred and sixty-one (161), and which is bounded as follows:

Beginning for the same at the northeast corner of said original lot numbered one (1) on Connecticut avenue, and running thence along the line of said avenue southeastwardly twenty (20) feet, and thence southwestwardly to the dividing line between said original lot numbered one (1), and original lot numbered two (2), in the same square; thence northwestwardly twenty (20) feet, thence northeastwardly to the point of beginning, it being the same piece of property as conveyed from Southey S. Parker and recorded in Liber R. M. H., No. 6, fol. 112. Also, that other certain piece or parcel of ground situate and lying in Washington City, District of Columbia, being east part of lot numbered three (3), in square numbered seven hundred and ninety-three (793), and which is bounded as follows: beginning for the same at the southeast corner of said lot and running thence one hundred and forty-four feet three inches (144 ft. 3 in.), thence west forty-two feet (42 ft.), thence southeastwardly about one hundred and forty-four feet three inches (144 ft 3 in.) to the line of E street south, thence along the line of the said street thirty-five feet six inches (35 ft. 6 in.) to the place of beginning, being the same piece or parcel of ground conveyed to the said Wm. E Spalding by deed being dated twentieth of November, eighteen hundred and sixty-six, from James C. Kennedy *et al.*, and recorded in Liber R. M. H., No. 26, fol. 42. Together with all and singular the appurtenances, rights, privileges, improvements, and other hereditaments to the same belonging, or in any wise appertaining, and all the right, title and estate of the said parties hereto of the first, second and third parts, respectively, in and to the same. To have and to hold the same piece or parcel of ground as above described with the appurtenances unto and to the use of him, the said Geo. W. Bonnell, his heirs and assigns forever free, released and discharged of and from all lien, claim, trust, or incumbrance.

And the said William E. Spalding, party hereunto of the first part his heirs and assigns, against the claims of the party hereto of the first part, his heirs and assigns, shall and will warrant and forever defend the said premises hereby

bargained and sold with the said Geo. W. Bonnell, his heirs and assigns against the claims of the parties hereto of the first, second and third parts, respectively, or any of them, and against the claims of all persons whomsoever claiming in any manner by, from or under or in trust for the said parties of the first, second and third parts, respectively, or any of them or the heirs and assigns of any of them.

In witness whereof the parties of the first, second and third parts have respectively hereunto set their hands and seals this day and year first above given.

WILLIAM F. SPALDING,
WILLIAM H. THOMAS, *Trustee.*
W. W. RAPLEY.

Acknowledgment in the usual form.

Assignment of Errors.

1. The court below erred in awarding to the appellee, William W. Rapley, a power of disposition over the property embraced in the deed of trust of Dec. 19, 1867, which that instrument did not confer upon him.

2. The court erred in allowing the substitution by parol testimony of a technically good consideration for the valuable consideration which is expressed in the deed of bargain and sale to the appellee Bonnell of March 27th, 1876.

3. The court erred in failing to consider or give effect to the settlement between the appellees Spalding and Rapley, as the same is evidenced by Exhibit —, I. B. L. No. 1, filed with the testimony of Rapley.

4. The court erred in assuming that the deed to Bonnell was given in extinguishment of a balance due from Spalding to Rapley, or that it was otherwise than a purely voluntary conveyance, and made in fraud of and to hinder and delay the subsisting and unsecured creditors of Spalding.

5. The court erred in giving to the deed from Spalding to Bonnell any other or different effect than that of a release of the property therein mentioned from the operation of the deed of trust of Dec. 19, 1867.

6. The court erred in holding the deed to Bonnell to be effectual to vest the title of the property thereby sought to be conveyed in Bonnell in trust for unnamed beneficiaries, to wit: the children of Spalding.

7. The court erred in holding the said deed to Bonnell effectual to vest in the grantee title to the property thereby sought to be conveyed for any purpose whatever.

8. The court erred in dismissing the original and amended bills of complaint.

Brief of Argument.

The bill seeks the release of the property mentioned in the foregoing deed to Bonnell from the operation of the deed of trust of December 19, 1867 (recited in the record at page 33), as well as the cancellation of the deed itself on the ground of fraud, and that it was made with intent to hinder and delay the creditors of Spalding in the prosecution of their just demands.

As is usual in this class of cases the badges or *indicia* of fraud are to be sought for in the financial condition of the debtor at the time of making the conveyance; in the circumstances attending the execution of the conveyance; in the character of the conveyance itself; in the inconsistent statements of the parties to the conveyance and in the admissions of those who, alone, are qualified to speak to the facts surrounding the alleged transfer of the property sought to be released from the operation of the conveyance. Applying to the Bonnell deed the established tests for the ascertainment of fraud, we find that the record abundantly

shows its existence, and the consequently void character of the instrument which it affects.

1. What was Spalding's financial condition at the time he executed the deed of trust of December 19, 1867, and what is the precise scope of that conveyance?

It is not denied that, at the date mentioned, Spalding was indebted to the appellant, among others, and the record shows that he was being then sued upon the very indebtedness which furnishes the foundation for these proceedings. On the 6th day of February following he submitted to a judgment, as by default for the full sum of $3,272.49 with interest. Neither is it disputed that the deed in question embraced all of his real estate, there being no claim by him to the possession of personal property. The trusts limited were, 1st: to secure the indebtedness, actual and contingent, of Spalding to Rapley, with full power to the latter of directing the manner of sale; and 2dly, (as to the residue of the property remaining unsold after satisfaction of the indebtedness,) for Mrs. Spalding and the children, with power in the former to make what disposition she might choose to make of the property in her lifetime through the intervention of the trustee.

So far as it affected Rapley this was a trust, in the ordinary, form to secure the repayment of his claim against Spalding, and conferred upon him no other or greater powers than belong to creditors similarly situated. He could not, for instance, by virtue of the authority conferred upon him by this deed, have made any disposition whatever of the property, therein embraced, without the intervention of the trustee. Neither was it in his power to have directed the sale to be made of any part of this property without applying the proceeds of such sale to the satisfaction of his debt in whole or in part; still less was he authorized to make a voluntary conveyance, either individually or through the medium of the trustee, of the whole or of any part of said

real estate. The reason of this lies in the fact, that the property, though specifically conveyed for Rapley's security and the payment of his debt, constituted as well, in contemplation of law, a fund for the satisfaction of the claims of all other existing creditors of Spalding. *Sale of the property was the established measure of its capacity to liquidate the indebtedness.* No other standard was admissible under the limitations of the conveyance. It will not do, therefore, to assert that, because Rapley chose to regard the lots which were afterwards conveyed to Bonnell as greatly disproportionate in value to the amount of his unsatisfied balance against Spalding, he had, therefore, the right to modify the terms of the trust, and, instead of subjecting said lots to sale, to give them away.

As to the limitation over to Mrs. Spalding, the deed, in view of Spalding's circumstances, is clearly inoperative. But this is immaterial to the present controversy.

We find, that Spalding, on the 19th of December, 1867, was indebted not alone to Rapley, but, also, to the appellant, and, as the record indicates (page 22), to other creditors, and that the limitations of trust, so far as they relate to Rapley, prohibit the assumption that he could authorize the voluntary conveyance of any part of the property or do more than direct the manner of its sale in satisfaction of his claim.

2. What were the relations between Spalding and Rapley? What was the occasion of and the circumstances attending the execution of the deed to Bonnell? What is the apparent character of that instrument, and what, at the time of its execution, was the state of the mutual dealings between Spalding and Rapley?

As in almost every similar case the fraudulent acts complained of are confined to a few parties, and the motives which supply the essential evidence of *mala fides* are locked

within the breasts of those who have actually participated in the wrongful acts. To arrive at a knowledge of these motives it is absolutely necessary to purge the consciences of the suspected persons and to rely upon such admissions and inconsistencies in their several statements as may tend to confirm well grounded suspicions arising from either the unusual or improbable character of the acts themselves. Ex. gr: the deed to Bonnell is a deed of bargain and sale upon the expressed consideration of $2,500. It purports to convey in fee simple part of the property embraced in the trust of December 19, 1867, and is jointly executed by Spalding, the trustee Thomas and Rapley. If this had been a conveyance made pursuant to a sale authorized by the deed of trust, nothing would have been more natural, and at the same time usual, than to have recited the fact of such sale, and the consequent authority for the execution of the conveyance. Suspicion, however, is at once excited by that part of the deed, which recites that the property embraced therein, instead of being sold by the trustee, the only authorized agent for selling, was in fact (bargained and sold,) " unto the aforementioned Geo. W. Bonnell," *by Wm. E. Spalding, whose title, together with the dominion over said property, had long since passed to the trustee.* The execution of this deed constitutes the fraudulent act. Suspicion of its fraudulent character is aroused by its extraordinary recitals. Let us now look to the answers of Spalding and Rapley, and to the latter's testimony or deposition for such admissions or inconsistencies as may tend to confirm the suspicions thus created by the deed.

The relations between Rapley and Spalding are set forth in Rapley's testimony on pages 22, 23 and 24 of the Record:

Q. What were your business relations with Wm. E. Spalding at the time of this conveyance, if any?

A. We were partners.

Q. Had you any other than business relations with Mr. Spalding at the time of the conveyance of the two lots in controversy to Bonnell?

A. No, sir.

Q. You have no family connection?

A. No, sir; our families have been very intimate, that is all. There is no relationship.

Again, at page 33 of the Record:

Q. State what led you to make this provision for Spalding's children, that you have testified to?

A. Our families were always intimate. I believe that Spalding's children looked upon me as a friend, and I think if one of my children should go to Spalding and ask for help, he would divide with him.

The deed to Bonnell recites that it was made upon the consideration of $2,500.00; and this, by a subsequent recital, would seem to have been the result of a bargain and sale to Bonnell by Spalding with the consent of Rapley, and the connivance of the trustee Thomas. How stand the facts as developed by the record?

It is admitted by all the parties to the conveyance, that it was based upon no valuable consideration whatever. Bonnell disclaims all beneficial interest in the property. Spalding under oath says, that "he had no interest in the property, and had no reason to unite in the conveyance." (Record, p. 10). Rapley, in his answer, page 17, makes this extraordinary statement: "that the said remaining lots, being far less in value than the amount of his debt, he did not think it necessary to subject them to further diminution by reason of the expenses attending a public sale, *but decided to take the same as a satisfaction of the indebtedness remaining due him from the said Spalding*, with a view to authorizing and directing, and did afterwards authorize and direct their conveyance to the said Bonnell, to be held by him in trust for the children of the said Spalding as a gift to them from this defendant."

When placed upon the witness stand, Mr. Rapley declares (p. 22) that conveyance was made of the lots embraced in the deed *at the instance of Spalding, who "asked him (Rapley) to give them to him (Spalding) for his (Spalding's) children."*

Q. Did William E. Spalding name the persons to whom he wished to convey that property?

A. Yes sir; I think he named Bonnell.

Q. Why did you not convey the property directly to Spalding's children?

A. *To keep his creditors from taking it from him.*

Mr. ROBINSON. I do not think he exactly understood that question.

The WITNESS. *I understood Spalding, and had had experience enough with him to know that if he had not old creditors enough he would soon make new ones. I wanted to put it out of Mr. Spalding's reach, or any one else to take it from him, as I wanted it for those children.*

Q. Did not Mr. Spalding say the same thing—that he wished it put in the name of Bonnell, so as to keep it from his creditors.?

A. I think not, sir.

Q. Are you positive? Did not he mention the name of Bonnell for the purpose?

Mr. ROBINSON. I object to this question, as it is cross-examination, and not in the nature of the examination in chief, as this witness is the complainant's witness.

Mr. LAMBERT. But he is drawn from the ranks of the defendants.

A. Well, that I am not positive of; I think not."

Forgetting, apparently, the statement in his answer, that he had taken the lots mentioned in the Bonnell deed as a satisfaction of the indebtedness due him from Spalding, the witness, after exhibiting Spalding's note for $10,000.00, which he claims had never gone out of his (witness's) possession, testifies, at page 32, on being cross-examined by his own counsel—

Q. *And you are still the holder of this note, which is unpaid and secured by this trust?*
A. *Yes, sir.*

The amount of the indebtedness, to secure which the trust of Dec. 19, 1867, was given, is limited by that instrument to a subsisting liability of $10,000.00, and to a contingent liability of $20,000.00—in all, $30,000. We must look to the answer of Rapley for the only statement of indebtedness on the part of Spalding, which is furnished by the record. By this it is made to appear that the gross amount of Spalding's debt to Rapley, at the date of the Bonnell deed, was $68,095.36, and that the credits to which Spalding was entitled amounted to the sum of $40,127.36 in gross. This would leave a balance due of $27,968.00. It is evident, assuming that this statement is correct, that all in excess of the sum of $30,000.00 was unsecured by the deed of trust, and, as the gross amount of credits exceeds the sum of $30,000.00 by the amount of $10,127.36, it is equally evident, upon Rapley's own showing, that, at the date of the Bonnell deed, the indebtedness secured by the deed of trust had been more than satisfied, and the residue of the property remaining unsold, had been fully released from its operation. On the other hand, assuming that the deed of trust could, by any possible construction, be regarded as having been given to secure the full amount of the indebtedness set forth in the exhibit to Rapley's answer, it is evident, by a reference to the answer of Spalding, which contains the only statement of the aggregate amount of the proceeds of the sales of property under the deed of trust, that Rapley has failed to allow all the credits to which Spalding was legitimately entitled. These proceeds aggregated the sum of $22,046.46, which, added to the sum of $40,127.36, would increase Spalding's credits to the sum of $63,173.82. There would, therefore, (giving the greatest degree of latitude to Rapley's state-

ment,) be left, as due to Rapley at the date of the Bonnell deed, the sum of $4,921.54, instead of $27,968.00.

It will be observed, by reference to Rapley's testimony, that although repeatedly called upon for the vouchers to which he refers as showing the state of his account with Spalding, he never in fact produced them; neither does he undertake to state the balance alleged to be due him by Spalding, except through the palpably incorrect, general, and vague exhibit which accompanies his answer. Neither does he, although requested and given every opportunity to do so, furnish the schedule or list (which he claims to have made) of the property sold under the deed of trust or account for the proceeds of sale applicable to the satisfaction of his claim.

The most conclusive evidence, however, of the full satisfaction of Rapley's demands against Spalding, is furnished by the former's testimony, wherein, after repeated requisitions, he is impelled to produce Exhibit I. B. L. 1, (Record, p. 27.) This was the agreement and release signed by Spalding, made after an accounting with Rapley, whereby the latter was released from any and all demand and claim on account of the former, and is set forth in full in the foregoing statement. *It is evident from Rapley's testimony that no corresponding paper was executed by him.* It is equally evident, from an examination of the so-called account between him and Spalding, that such a paper was then eminently desirable from Spalding. The possession and exhibition by Rapley of Spalding's $10,000 note, however inconsistent with the foregoing exhibit, are abundantly explicable by reference to the intimate relations which have always subsisted between them.

In respect of another defense set up by Rapley touching his interest in the ownership of sub-lot 11, square 161, it is observable, first, that the deed of trust treats the lot as the absolute property of Spalding; second, that Spalding,

in his answer filed May 24, 1879, makes no mention of any such interest in Rapley; third, that the claim is made for the first time by Rapley himself, in his answer to the amended bill, filed as late as Dec. 31, 1880; fourth, that, forgetting, apparently, the claim then made by him to a part ownership of lot 11, sq. 161, in the course of his examination, conducted on the 21st of January, 1881, he transferred the claim to lot 3, square 793, on Capitol Hill (Record, page 20), and testifies on page 25 as follows:

Q. When and by whom was this property on Connecticut avenue conveyed to Wm. E. Spalding?
A. That I cannot answer.
Q. Do you know how long it had been in his possession or in his name previous to the deed to Bonnell?
A. I do not, but for a long time.
Q. *Had you any previous personal acquaintance with this property?*
A. *No, sir.*

And Fifth, *that it is borne on the assessment books of the District of Columbia in the name of W. E. Spalding alone.*

And Sixth, that by the terms of Ex. J. B. L., 1, Rapley released all interest therein to Spalding, March 27, 1876.

I submit, in view of the foregoing, that the inference is irresistible that Rapley's claim to any interest in the Connecticut avenue property is the result of an afterthought predicated upon its enhanced value, and is utterly without foundation in fact.

There are many minor descrepancies between the answer and the testimony of Rapley which it might be curious to note, but which are deemed to be wholly unnecessary to further demonstrate the appellant's claim to the redress which he seeks.

Either the debt to Rapley had been paid on the 27th of March, 1876, or it had not. If it had, the purpose of the

trust of December 19, 1867, was satisfied so far as Rapley was concerned, and he had no further concern with the property in question. If it had not, he was still the *cestui que trust* under that deed with power to direct a sale of the property, either publicly or privately, *in satisfaction of his claim*, but with no other power or authority over it.

It is clear, therefore, in either alternative, that he was wholly without capacity to make a gift or voluntary conveyance of the property.

Rapley's power, under the deed, is confined strictly to directing sale, upon default, in payment of his debt. He might, it is true, have caused release to be made of all or a portion of the property, whereupon it must have reverted to the grantor or inured to the benefit of the latter's alienee. But he was wholly incompetent to prescribe for it a channel of alienation not contemplated in the scheme of trust exhibited by the deed.

A gift or voluntary conveyance of the property by or at the instance of Rapley is certainly not within the purview of the trusts established by the deed. Therefore, Rapley must have been disqualified to make such a gift, or to execute such voluntary conveyance. The conveyance once made, however, although ineffectual to vest the beneficial enjoyment of the property in the grantee, was undoubtedly good as a release from the operation of the trust of December 19th. It is none the less an estoppel upon Rapley in respect of any claim he may hereafter set up to have the property therein mentioned applied to the satisfaction of Spalding's indebtedness.

To whose benefit, then, does this release inure? The answer is plain. If Spalding had not been otherwise indebted at the time, it must have inured, as I have already said, to his benefit or that of his assignee. Inasmuch, however, as he really was indebted at the time to other creditors than

Rapley, it is to their benefit only that the release thus effected must be held to inure.

It is only as a trust to secure Rapley that the deed of December 19, 1867, can be sustained. The limitation over for the benefit of the grantor's wife and children, was, in reality, a post-nuptial settlement, and made under circumstances that render it clearly voidable at the instance of pre-existing creditors, either according to the principles of the common law, or under the Statute of 13 Elizabeth, Ch. 5.

a. The deed was executed at a time when Spalding was heavily indebted to the National Bank of the Metropolis, among other unsecured creditors.

b. The settlement is of all his property, which shall remain unsold after the satisfaction of his debt to Rapley. In other words, attempt is made to withdraw Spalding's equity of redemption from the reach of possible execution at the suit of existing creditors, with no pretense whatever of a valuable consideration to support the conveyance.

c. The settlement being voluntary and of all the settler's property, the presumption is conclusive that it was made with intent to hinder and delay existing creditors.

In *Sexton* vs. *Wheaton*, this Court has said:

> "In construing this statute (13 Eliz.) the courts have considered every conveyance, not made on consideration deemed valuable in law, as void against previous creditors." (8 Wh., 242.)

In *Parrish* vs. *Murphree*, the Court used the following language:

> "If an individual, being in debt, shall make a voluntary conveyance of his entire property, it would be a clear case of fraud. * * * And if a settlement be made without any fraudulent intent, yet if the amount thus conveyed impaired the means of the gran-

tor, so as to hinder or delay his creditors, it is as to them void." (13 How., 98–99).

There is no difference in principle between fraud in law and fraud in fact. If the direct consequence of an act be to hinder or defraud creditors, the presumption is conclusive that such illegal object furnishes a motive for doing it, wherefore it is fraudulent. One man's right does not, therefore, depends upon another's moral sense.

Potter vs. *McDowell*, 31 Mo., 62.

Quoad existing circumstances, therefore, the settlement or limitation over in the deed of December 19th, 1867, was void, and the deed itself operated as an ordinary trust for the securing of Spalding's debt to Rapley. The former's equity of redemption, at the date of the so-called deed to Bonnell, still constituted the subject of equitable execution through the medium of a judgment creditor's bill.

That being the case, it is perfectly clear that Spalding himself was incapable of defeating existing creditors by conveying his equity of redemption in any part of the property covered by the trust. Is he in any better position when he attempts to do that by others which he could not do himself? Shall the interposition of the *cestui que* trust Rapley, the narrow limit of whose power we have seen, and of the bare trustee, Thomas, secure the attainment of an end which no act of Spalding could legally accomplish? We are confronted simply by a novel application of the old device of attempting to compass an elicit design *per interpositam personam*. Rapley, whose dominion over the property conveyed was confined, by the terms of the antecedent trust, to directing its public or private sale to satisfy his claim, is said to have made a free gift of it to his debtor and his debtor's children. No corresponding remission is made in the amount of the debt, neither is it pretended that its full satisfaction will not be made out of the remaining property. Could

anything be more foreign to the purposes of the trust of December 19th, than the execution by Rapley, or the trustee, of such a conveyance?

But little difficulty will be found in ascertaining its true legal scope and effect when we regard it, as it must be regarded, as having been made alone by Spalding. We find the latter, at the date of its execution, heavily indebted to other creditors than Rapley. One of these is a judgment creditor to a large amount. The deed is made upon a money consideration, which never was, in fact, paid, (see Answers of Spalding and Bonnell), and to a grantee who was not qualified, pecuniarily, to pay it. The grantee was, likewise, in close social and partnership relations with the grantor.

To rebut the presumption of fraud, thus conclusively raised, a defense, by way of confession and avoidance, is interposed. The absence of consideration and the pecuniary inability of the grantee are admitted, but it is attempted to avoid the effect of this by setting up another and a different badge of fraud, to wit: a secret trust in Bonnell to hold for the use of unnamed beneficiaries.

A secret trust between the parties is a badge of fraud, for fraud is always apparelled and clad with a trust; *an instrument which misrepresents the transaction that it recites is evidence of a secret trust, aud is calculated to mislead and deceive creditors. A false statement of the consideration for a transfer tends to such deception and is, likewise, a badge of fraud.*

Venable vs. *The Bank*, 2 Pet., 402;
Kemper vs. *Churchill*, 8 Wall., 362;
Divvee vs. *McLaughlin*, 2 Wend., 596.

Neither is it open to Spalding to assert that the real consideration for the deed was love and affection for his children; for this would be to substitute, by parol, a good consid-

eration for the valuable one which is falsely recited in that instrument.

It is true that such a consideration, even if it had actually been set forth in the deed, would not have sustained it as against impeachment by previous creditors.

The attempt, however, to advance it as a defense in the answer of Spalding, although indirectly made, merits a passing notice.

Parol evidence is inadmissible to prove that a deed was not given for a money consideration, and, therefore, inoperative as a deed of bargain and sale, when the deed sets out a money consideration.

Hurn's Lessee vs. *Soper*, 6 H. & J., 276;
Jones vs. *Slubey*, Id., 372;
Betts vs. *Union Bank of Md.*, 1 H. & G., 186–7;
Cole vs. *Albers*, 1 Gill, 412–423.

Nor is it admissible to oppose to the evidences of fraud furnished by the circumstances attending the execution of this deed, the parol statement that it was made in consideration of the circumstances of Spalding's children. While it it is true that fraud, in fact, may be disproved by evidence extrinsic to a deed, the rule is subject to the limitation that such evidence must be consistent with the instrument in aid of which it is offered.

Ex. gr. where the consideration named in the deed is true extraneous evidence may be adduced to show the existence of a further consideration *of the same nature.*

But if money is the expressed and only consideration for the transfer, and no money actually passed, it is not allowable to set up, *aliunde*, another consideration, although valuable, in aid of the conveyance. *A fortiori* where a valuable consideration is falsely recited, it is incompetent to contradict the terms and alter the character of the deed by sub-

stituting a purely good and, therefore, essentially different one.

Hinde's Lessee vs. *Longworth*, 11 Wh., 229;
Betts vs. *The Union Bank of Md.*, *supra*;
Hildreth vs. *Sands*, 2 Johns. Ch., 35;
Rollins vs. *Shreves*, 25 Me., 192.

In conclusion, I beg leave to repeat that the power committed to Rapley over the property, by the former instrument, is confined to procuring its sale or authorizing its release. The latter was not, as we have seen, made in the exercise of this power. That it worked, however, an effectual divestiture of the trustee's title, and a consequent release of the property from the trust previously given to secure Rapley, there can be no doubt. The latter, by cooperating in its execution, is estopped from denying to it this effect.

Estoppel is defined to be the preclusion of a person from asserting a fact by previous conduct, inconsistent therewith, on his own part or the part of those under whom he claims. It is a preclusion, in law, which prevents a man from alleging or denying a fact, in consequence of his own previous act, allegation or denial of a contrary tenor.

Stephen, Plead., 239.
Van Rensselaer vs. *Kearney*, 11 How., 322,

In respect, therefore, of the grantors, Thomas and Rapley, the deed of March was nothing more, nothing less, than a release.

On the other hand, as it respects Spalding, I have already shown that it must be regarded as an attempt by a mortgagor, made with the connivance of his mortgagee, to defeat other pre-existing creditors by the voluntary conveyance of his equity of redemption upon a secret trust. It is clear

that the unnamed beneficiaries can take nothing by this illicit proceeding, and that the grantee holds the property discharged of the lien created by the deed of Dec. 19, 1867, and as a trustee for the benefit of the complainant, and other judgment creditors of the grantor, William E. Spalding.

Wherefore, it is submitted that the decree of the Court below ought to be reversed, and the prayers of the bill allowed.

T. A. LAMBERT,
Of Counsel for Appellant.

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SUPPLEMENT.

Since printing his brief the appellant has discovered that "Exhibit W. W. R. No. 1," on page 17 of the printed record, is grossly erroneous in its calculations. Taking the statement of principal and interest as therein given the sum total is very much less than that mentioned in the exhibit. The correct statement is as follows:

Principal (sum total)	$45,106 88
Interest (sum total)	12,884 48
Total (debits)	$57,991 36

Which is $10,104 less than as given in the exhibit.

Then to the credits should be added the sum of $22,046.46, which is shown by the defendant Spalding's answer, the only evidence on this point, to have been the proceeds of the several sales made under the deed of trust, and then the credits will be as follows:

Interest in theatre lots	$22,250 00
Balance of property	2,877 36
W. H. R., portion of insurance	15,000 00
Proceeds of sales	22,046 46
Total (credits)	$62,173 82

This shows that, instead of there remaining an indebtedness from Spalding to Rapley, the latter had been overpaid $4,182.46, and there was good reason for his solicitude to get an acquittance from Spalding.

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117-370

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

JOHN VAN RISWICK, *appellant*,
vs.
WILLIAM E. SPALDING *et al.*
No. 156.

Brief in Behalf of Appellees.

It appears from the record, that by a deed of Dec. 19th, 1867, recorded Dec. 20th, 1867, the defendant, Wm. E. Spalding, conveyed certain pieces of property therein enumerated to W. H. Thomas to secure certain obligations, also enumerated, of said Spalding to the defendant, Wm. W. Rapley (Rec., p. 33).

The deed contains the provision, that, upon the failure of Spalding to meet his obligations as they matured, the trustee shall, "upon the written order of said Rapley, proceed to sell at public auction, to the highest bidder, all the said pieces or parcels of land and premises, or so much thereof as may be necessary" * * "and upon this further trust that the said Wm. W. Rapley be, and thereby *he* is authorized to order and direct the trustee at any time during the continuance of the trust to sell and dispose of all said pieces or parcels of land and premises, and any portion thereof, at private sale." (Rec., p. 36.)

On March 28th, 1876, of the property thus conveyed, not sold in satisfaction of the trust, there remained the real estate mentioned in the bill, the assessed value of which is shown to have been $3,297 (Rec. p. 13); of the indebtedness secured, there remained still due and owing to the said Rapley $10,000.00 and upwards (Rec., pp. 17, 19, 28, 29, 32), or as stated by Rapley in his testimony more than $27,000.00. (Rec., pp. 17, 21, 30.) Further, in respect to one of the remaining lots, to wit: lot (11) sq. (161) assessed at $1,583, or nearly one-half the whole assessment, although at the time of the deed to Thomas, the same was standing in the name of Spalding, yet Rapley was himself the equitable owner of one-half thereof (Rec., p. 17). In this state of affairs, Rapley accepted the real estate worth $3,297, of one-fourth of which he was the virtual owner, in satisfaction of the debt, and then directed the trustee, Thomas, to convey the real estate, thus elaborately acquired to George W. Bonnell, to hold the same for the children of Spalding (Rec., pp. 9, 11, 17, 20, 22, 29, 30, 31, 33, 37, 40). So long as Rapley's creditors do not object, it is difficult to see the right of any others to complain.

Points and Authorities.

There is no particular formality required or necessary in the creation of a trust. Any agreement or contract in writing, made by a person having the power of disposal over property, whereby such person agrees or directs that a particular parcel of property, or a certain fund, shall be held or dealt with in a particular manner for the benefit of another, in a court of equity raises a trust in favor of such other person against the person making such agreement, or any other person claiming under him voluntarily or with notice, and the statute of frauds will be satisfied if the trust can be manifested or proved by any subsequent

acknowledgment by the trustee, as by an express declaration, or any memorandum to that effect, or by a letter under his hand, or by his answer in chancery, or by his affidavit, or by a recital in a bond or deed, or by a pamphlet written by the trustees; in short, by any writing in which the fiduciary relation between the parties and its terms can be clearly read. And if there is any competent written evidence that the person holding the legal title is only a trustee, that will open the door for the admission of parol evidence to explain the position of the parties. (Perry on Trusts, § 82.) A deed absolute on its face may be proved to be a mortgage. (*Phelps* vs. *Seeley*, 22 Grat., 573.) Or deed of trust. (*Maccubbin* vs. *Cromwell*, 7 G. & J., 157; *Urann* vs. *Coates*, 109 Mass., 581; *Shelton* vs. *Shelton*, 5 Jones' Eq., 292; *Pratt* vs. *Ayer*, 3 Chand. Wis., 265.) "If one procure a deed of conveyance of land to be made to him, upon the promise and assurance that he will hold it in trust for another, that trust may be established by the parol testimony of the grantor, and if the land be sold by the grantee, the *cestui que trust* may maintain an action against him to recover the price." (*Miller* vs. *Pearce*, 6 W. & S., 97.) "It is a principle well established in equity that a trust need not be created in writing." (*Unitarian Society* vs. *Woodbury*, 14 Me., 281; *Flagg* vs. *Mann*, 2 Sumner, 529.)

As the trustee may in a court of law, as a general rule, deal with the legal estate in his hands as if he were the absolute owner, so the *cestui que trust*, in a court of equity, may deal with the equitable estate in him.

In this case, the trustee Thomas held the bare legal title, and his conveyance was of importance to the grantee only as it might be required to give the latter a standing in a court of law. The beneficial and substantial ownership was in Rapley, and he could alien it in equity as completely as the trustee could in law. (*Reid* vs. *Gordon*, 35

Md., 184; *Campbell* vs. *Prestons*, 22 Grat., 396.) Any legal conveyance by the *cestui que trust* will have the same operation in equity upon the trust as it would have had at law upon the legal estate.)*Croxall* vs. *Sheperd*, 5 Wall., 281; *Rycroft* vs. *Christy*, 3 Beavan, 238; Perry on Trusts, § 102; Id., § 321.)

The transaction complained of in the bill is exclusively creditable to Rapley. In a manner most honorable to himself, Rapley has sought to provide for the children of his debtor, by restoring to them a portion of the estate, which was forfeited by their father. It were well if there were more such creditors. Such cases unfortunately are not numerous, but whenever such conduct has been submitted to a Court of Justice, it has been commended, not condemned. A. being a creditor of J. purchased his land at Sheriff's sale, leaving J. much in debt to him; he afterwards sold part of the land at a large advance. He conveyed the remainder to the wife of J., who was insolvent, J. paying him the balance of his debt after allowing him credit for the advance on the sale. The transaction was a gratuity to the wife and not fraudulent as to creditors. *Winch* vs. *James*, 68 Pa. St., 297. "No law bound him to do it. It was a simple gratuity to an old neighbor. * * Mrs. J. was, therefore, not a trustee under the conveyance to her of the property for any one; it is as much her's as if she had bought it with her own money. * * It would have remained A's, if he had not conveyed it to Mrs. J. and her daughter-in-law. * * Judge Arnett could lawfully make a present of the property to Mrs. James, if he chose, as he did when he made the deed to her. She took the same title he held, and Mr. W. acquired no more right by a sale of it on execution, than if he had seized and sold it after it had passed by a sheriff's sale to Arnett." *Id.* 301 S. P., *Wieman* vs. *Anderson*, 42 *id.* 317; *Miller* vs. *Pearce*, 6 W. and S., 99.

In the scheme of this suit, the principal seems to have been lost sight of, that "no one but a creditor of the grantor can avail himself of the objection, that a deed was given without consideration." *Hatch* v. *Bates*, 54 Me., 136.

LEIGH ROBINSON,
of Counsel for Appellees.